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FIRST DEAN OF THE SCHOOL

By his Wife and Daughter

A. M. BOARDMAN and ELLEN D. WILLIAMS

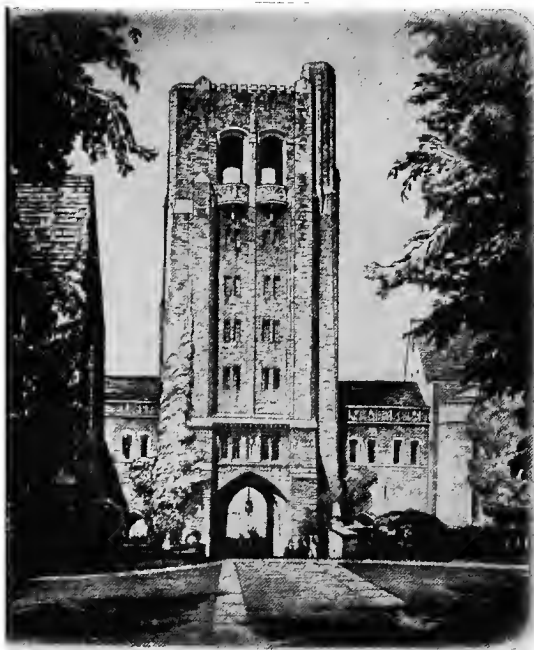
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ILLUSTRATIONS  
IN  
ADVOCACY.

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# ILLUSTRATIONS IN ADVOCACY,

INCLUDING

TWO BREACHES OF PROMISE OF MARRIAGE;

ANALYSIS OF SIR HENRY HAWKINS' SPEECH

IN THE

TICHBORNE PROSECUTION

*for Perjury.*

HIS CROSS-EXAMINATION OF "OLD BOGLE"

AS TO THE TATTOO MARKS.

ANALYSIS OF

CICERO'S DEFENCE OF ROSCIUS

*for Murder.*

COUNTY COURT ENTERTAINMENTS,

A Humble Address to our future Judges,

*&c., &c.*

BY RICHARD HARRIS,

BARRISTER-AT-LAW, MIDLAND CIRCUIT,

*Author of "Hints on Advocacy," "The Humorous Story of Farmer Bumpkin's  
Lawsuit," &c., &c.*

LONDON:

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## PREFACE.

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As Experience is the severest school, so mistakes are its hardest lessons. My business is not to teach, but to give the result of my observations, and my observations have been principally directed to the leading men (nominally) in the profession. Were I ever so great a teacher I could never hope to teach my leaders, nor could I expect them to condescend to be taught. But if I could not induce them to be learners, it is no reason why I should not compel them to be teachers. Many of them are so full of instruction, to say nothing of amusement, that it would be a thousand pities to let it flow away, without so much as sprinkling the thirsty inquirers for knowledge, who sit watchful and gasping on the banks of this bountiful stream !

The world is full of teachers—do not let it be supposed that I wish to add to their number—let me rather be the entertaining companion of an idle hour. By this means my book will not be confined to the limited number of aspirants to Forensic honours, but will extend its circulation to the world of readers, who sometimes require a change from the tideless deep of philosophy, or the gushing rivulets of romance.

RICHARD HARRIS,

LAMB BUILDING, TEMPLE,

*London, July 1st, 1884.*

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## PRELIMINARY.

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“Then slowly climb the many-winding way,  
And frequent turn to linger as you go.”

*Child: Harold's Pilgrimage.*

IN writing these illustrations I have endeavoured to effect three objects:—first, to give the young advocate some warning of the dangers that lurk in his path, without alarming him; secondly, to indicate the means of escape, without involving an inglorious retreat; and, thirdly, to entertain him on his journey, without frivolity.

In surveying a wide expanse of country we obtain glimpses of beauties as well as blemishes; but the beauties are not always to be courted, nor the blemishes to be avoided. In advocacy, I observe rather its mistakes than its perfections. The former you may fix as landmarks to guide your course; the latter you can scarcely hope to appropriate as possessions. Moreover, the blunders are common property, which everyone has a right to deal with as he pleases. Perfections are the inheritance and birthright of the few. We may toil on towards perfection, and even approach its enchanting confines; but the *way* is rugged and wild, strewn with the errors of those who have preceded us, and dan-

gerously near the treacherous quagmires, towards which the spectral dazzle of cross-examination, lures us to destruction.

If I presumed to set up as an adviser of reckless youth, I should say seek only to avoid blunders; take no thought for perfections; they will take care of themselves; they are not necessary to your existence; and even, if they should stimulate your ambition, they should never divert your attention from its duty. Labour not to be rich in display, but to be competent in your homely requirements.

Looking around, then, from our little hillock of observation; and, permitting the eye to rove unchecked over the vast field before us, we perceive that many persons regard advocacy as a rough and tumble *Scramble*, and not as a delightful and fascinating Art; as a Game, boisterous and rude; in which you are supposed to pick up what you can; as a Football match; in which the Cause is kicked about, amidst much unnecessary confusion, from pillar to post, from hedge to ditch; where nobody's shins are spared and no one's susceptibilities regarded. Advocacy is not this; it is more a matter of nice calculation and foresight, where one move may affect many; where the object of the mover is not always visible, till its success is assured; and where your probable move is calculated upon the possibilities of your opponent's.

No one can go through the Courts without seeing that cross-examination often proceeds without method, order or system; as though it were a haphazard kind of business that has to be done mechanically, as the officer administers the oath to the jury. You may see everyday advocates cross-examine as though

their object were to develop, not their own case, but their opponent's. They ask questions which the other side cannot, or dare not, ask; and, instead of breaking down their opponent's case, they build it up in the strongest possible manner, as though they had been retained on the other side. Nor is this unskilful mode of proceeding by any means confined to juniors.

I daresay everybody thinks he could "do a breach of promise of marriage;" and wishes he only had the opportunity of "bringing himself out" with one. It looks so remarkably easy, and is so full of excitement and fun! Fancy reading the love letters! So, anybody could drive a locomotive, in the sense of pulling the lever and setting the machine in motion. But what if you don't understand the gradients of the line, or the signals? What if you don't know how to regulate pace and put on and shut off the steam? and how to apply the break when necessary? Where, I wonder, will your passengers be, should a goods train or an excursion be a trifle late? Why, you will come into collision with the judge and jury before you can sound your whistle. Advocacy is not quite pulling a handle and going ahead. I make these observations, because I intend to take, as my first illustration, an action for Breach of Promise of Marriage; and, without attributing blame to anyone except the client, I intend to show how the defence in a breach of promise may collapse from want of proper treatment, even with the tender nurturing of an experienced nurse. The course of advocacy does not always run smooth. For the sake of my illustration the case must be one, where, albeit the lady was pretty and the promise broken; no

substantial damages, under the circumstances, could have been secured without some untoward event. There might have been a farthing or a withdrawal of a juror. I have chosen a curate of High Church proclivities, as the defendant, because it will make the case more interesting, and lend an additional charm to the fascinating scene. It is not often we get a clergyman to play the part of defendant in such a case; but, when we do, the excitement becomes intense and the action religiously picturesque.



ILLUSTRATIONS  
IN  
ADVOCACY.

“Admire, exult—despise—laugh, weep, for here  
There is such matter for all feeling.”

*Byron.*

## A BREACH OF PROMISE OF MARRIAGE.

---

THE COURSE OF ADVOCACY DOES NOT ALWAYS  
RUN SMOOTH.

“The awful, dear, delightful depth of things.”—*Brooke*.

FROM a somewhat careful observation, I have reluctantly come to the conclusion that in five cases out of six I would back the advocate and not the case. This may sound rather like sporting phraseology, but it is not the less expressive or true on that account. I would not compare the ordinary advocate to the great jockey who, as a rule, gets the best “mounts,” for the ordinary advocate cannot always choose his mounts, and often gets put on a rank outsider. Nevertheless, it is the advocate after all that I would put my money on. An utterly bad case is good for a young counsel, but a great one will hardly ever entertain it. He picks the cases he will conduct, and likes something that “has a leg to stand on,” something that will “go.” His chief power when he is compelled to fight a bad case lies in attack, and if he can break down the good cause of his opponent

he is a long way on the road to establishing his own. Suppose then we start with an interesting action for breach of promise of marriage. A good advocate will almost win a case of this kind before he begins, while an indifferent one will sometimes lose it even if the jury give him a verdict, for in all probability the damages will be so small that his client will be left in debt to his solicitor for costs.

There is no more popular action than that for breach of promise of marriage; none more distasteful to a judge or interesting to a jury, and I trust it will never be abolished, because it at least acts as a check to artless and fickle prowlers after beauty, who make a mock at the feelings of the too trustful and confiding fair one, whose chief prospect in life is a happy marriage. Abused this form of action unquestionably is, and so is every other form; but it has mainly been brought into contempt by the ridiculous handling which it has undergone by unskilful advocates. In a business-like manner it is seldom managed. Sometimes counsel think it an occasion for humour; but if it were how many advocates are there who possess this quality? What humour is there in the ordinary speeches that too often transform the luckless plaintiff into a laughing stock before ever she comes into the witness box? What of such an observation as this:—

“Gentlemen, it has been well said that the course of true love never did run smooth?” There is nothing humorous in the saying, yet it provokes a laugh! And why? Because everybody knows that the learned gentleman is about to lay bare some of the tenderest feelings of the human heart, and to

wound its most delicate susceptibilities—he is about to dress up pure sentiment in the raiment of unseemly language, and to present a tawdry picture of a living passion. It is the forseen incongruity that provokes a smile, and not the humour of the counsel. The same laughter is produced when he attempts the sentimental. He unconsciously, and in a mild and shadowy form, imitates Serjeant Buzfuz. He is Buzfuz without his power. He does not reach the hearts of the jury, but unconsciously provokes their sense of the ridiculous:—"Gentlemen, what money can compensate for injured feelings, for blighted hopes, for blasted prospects, for the loss of all that happiness that she fondly believed was in store for her? You cannot place her in the position she once occupied with her heart at her own disposal, for that heart is already given away, although given to one who is unworthy of it: but you can do this, gentlemen, you can give her such compensation as you think her entitled to, and you can punish this man in the only way in which he can be punished, and that is by making him pay." It comes to this "How much for this heart, gentlemen?"

That is an eloquent speech truly; I have heard it scores of times, but it begets no sympathy—it brings no damages. If damages are obtained they are obtained by the facts, and not by the speech which generally reduces them. Moreover it is an incorrect mode of putting the case, as the judge will by and by point out. Punishment is not the object of the action for breach of promise. Punishment is inflicted for a crime or a misdemeanour. A breach of

promise is neither the one nor the other. And although the advocate probably intended his remark to be figurative, the judge will so strip it of its figurativeness, that it will appear as a naked untruth at last, or worse, as a legal deformity. "The measure of damages," the judge will say "is what the plaintiff has lost by the non-performance of the contract, and anything you may award as compensation for injured feelings. *No punishment to the defendant.* Cases are too frequently opened as the boy opened the bellows to see where the wind came from.

With these prefatory observations I will introduce the reader to the Court where this exciting action is about to take place.

I observe that there has been a desire to settle, so as to prevent the scandal which must arise from the proceedings being gone into; and no wonder, for the whole country will read the report of this ecclesiastical romance. The action is brought by a very interesting and strong-minded lady against an interesting High Church curate. Some talk there has been of a settlement to this effect, that there shall be no damages and each party pay his own costs. But a breach of promise is not repaired like that. The case looks as neat and capable of winning as beauty ever is; so all overtures of this kind are scornfully rejected. The parties might have arranged matters before a penny had been spent in litigation, if the fair promisee had been so minded. But so minded she was not, and is not disposed to haul down the flag when victory is waiting her. High Church, therefore, looks contemptuously down from its frowning height and waits result.

It is a great satisfaction to the eager public who have come so far to see the conflict. People came from all directions like the throngs who went to witness the tournament at Ashby-de-la-Zouch in the olden days. Every inch of Court was filled up. Rosy-cheeked country lasses beamed with excitement and modesty. Fair country ladies pressed up to his Lordship's chair. His Lordship peeped out from the centre of a living radiant bouquet. It was a pity that the young curate sat in Court, for he was the centre of at least four hundred yearning eyes. He would hardly have been more attractive in his vestments. The dear young things quite gloated on him. What a sweet little suppressed titter and rustle of expectation there is in the galleries! You can almost hear the beating of their tender hearts, as the well-dressed crowd is speculating upon the interesting particulars that will be revealed of curate life and curate love, and wondering whether anything in the shape of scandal will be disclosed. We may even find out, think the male portion of the audience, what is that mystic religious influence which makes the curate so attractive to female minds and so penetrative to female hearts.

I can promise the eager crowd that they will find out nothing of this from the opening of the case, or from the examination-in-chief; and the most that will ever be learned from those sources of information, unless I greatly mistake the advocates, is that if you want to catch a curate you must *warm his feet*, that is, begin with the *slippers*. I do not predict that this is how the counsel will open the case. He was far too shrewd an advocate to make a clumsy jest of

a serious contract. *Contract or no contract was the first point.* The pleadings said the promise was conditional, and the condition had not been fulfilled. The condition set out was that the curate would not marry until he was in a position to do so. The position aimed at was a snug, comfortable living. So there was business to be done in this opening; and the business was to show fulfilment of the condition, or waiver of it by the defendant, or a *subsequent unconditional contract.* To the latter part mainly the counsel's efforts were directed, although, by means of an interesting correspondence, they endeavoured to establish not only this point, but the waiver. So you see there was something of art here. The one point held in reserve as the decisive trump card, not to be thrown away or played too soon; and another card or two, likewise held well in hand, capable of taking tricks. A good hand it certainly is, and might be thrown away very easily. But not by Mr. Longfellow. Bless you, he knew the value of his opponent's cards by one or two inadvertant observations.

"Not necessary," says High Church Counsel, "to read all the letters."

That immediately raises the suspicion that he is afraid of them. They are certainly not in his favour, and therefore it is best to see every page of this delightful correspondence. Every letter must be read after this: there may be a waiver in some and a fresh promise in others. Very few sensible men are afraid of *ghosts* nowadays, so there is something more than a suspicion that in the mind of the defendant there is substance in the letters objected to. First point, reader, which "having found make a note of."



It was not a sentimental opening. Sentiment is generally out of place in the construction of a contract, so the learned counsel postpones sentiment, and deals at present with hard concrete facts. It will be time enough to touch up the feelings of the jury when he replies. You may sometimes advantageously excite the compassion of a jury in your opening; but you will not be wise to do so if there are to be many witnesses and a number of letters submitted to their judgment. Let us have the business first, and if that can be satisfactorily settled, the time may come when sentiment may be invoked as a powerful auxiliary to *increase the damages*.

*Let the facts speak.* If they are ambiguous you have argument; if they are clear you want none. When proved you have your measure of damages to consider, and then will be the time to estimate the conduct of the defendant, the position of the plaintiff, and the injury to her feelings, all which topics must be handled without maudlin sentimentality or exaggeration. Manhood must prevail.

So Mr. Longfellow, Q.C., opened the case in a very business-like, unromantic, and common-place manner, much the same as he would open a case for damages for non-delivery of goods. What mattered that the goods were a curate? There was the promise and there was the non-delivery. It was enough, as will be seen by the progress of the case, and yet it was but a little, as was shown by the evidence. If you promise you must perform, or—pay. The defendant promised a curate, and did not deliver him. That's the simple case.

I am not going to write the tittle-tattle of the

trial for the amusement of the lay reader. I leave that to the newspapers, and content myself with giving the real points of the case for the information of the advocate, with such extras, or, as the Americans would say, fixings, as may be necessary to enable the general reader to appreciate the circumstances.

There was an absence of all that flimsy jocularity in the opening, which so often damages a plaintiff's case, and there was no attempt at ridiculous pathos. The injured feelings were left in the background like an ambuscade, ready at the right moment to spring out and deliver a deadly fire just when it was the least expected; no concealment of facts by maudlin sentimentality, but the sentimentality left to be discovered by the facts. If your facts can do this you need not, if they cannot you cannot.

The plaintiff was as prepossessing in appearance as any plaintiff need be; but I should say she was a lady of strong will and considerable mental capacity—far too heavily freighted, one would think, for the wife of a curate—more adapted, perhaps, for the consort of a bishop. Her capacity for letter-writing was known by its fruits, of which there was an abundant harvest. How the love-making began need not be written. Everybody knows that with the Church it must begin humbly with the slippers. It is a malady, as young ladies are well aware by unmistakable diagnostics, which quickly develops, and when it reaches the heart the patient is gone. There was plenty of talk, you may be sure, in the progress of this love-making, about cassocks, stoles, albs, altar-frontals, chasubles, and the rest of the gaudy eccle-

siastical millinery so dear to the female heart; and there was much interesting evidence of the endearments that sometimes spring from the sweet harmony of souls in a state of grace, through all of which sweet Love threaded her silent course, all unobserved and unobtrusive, gently spinning her mystic toils in quiet strength around the heart of the beautiful curate.

The story came out well in the examination-in-chief—there was not a gap discoverable anywhere. It was like a charming piece of ecclesiastical embroidery where the pattern is graceful and complete, and you see the golden thread everywhere in its simple and tasteful beauty. Still, there was an impression throughout the Court that the superior mind was in the witness-box, and the weaker under the counsel for the defence, and that the mind and passions were in harmony. The plaintiff unquestionably was the possessor of strong feelings; in fact, she was what you might call “clinging” in her loveliness. The attitude she assumed in her devotion reminded one of the position of the confiding female in the picture clinging with rapturous agony to the rock, which is in the shape of a rough-hewn cross, while the billows are breaking around and above her. Now, I would observe that a strong-minded lady in an action for breach of promise is not always a good witness. She is generally too emphatic and too certain—too absolutely *there*. Juries glance at her and think what would be their domestic freedom under such a government. No witness makes less impression than a hardened scientific female; the next to her is the strong, confiding, clinging, sentimental, religious creature, who throws

herself into every adventure as if she were taking a header from a boat. Her case is too absorbingly good, and she is always too much injured.

Not a great deal of damage was done by the story of the love-making, the taking up by the defendant of his abode in the house of mamma "for the sake of companionship and convenience," the having some one to care for and to comfort him, the slipper-working and the slipper-warming; the getting-up of evening classes, the discussion of abstruse doctrines of divinity, the reading together in the Greek Testament, the discourses upon the Athanasian creed and the colours of the curate's vestments. All these and a hundred other pious incidents of ecclesiastical life in a country town, were but common-places which might have been compatible with platonic friendship. What an artless, innocent question was now put in faltering accents, and with suppressed emotion!

"And after all this treatment are you—excuse my asking you—but are you fond of him still?"

The plaintiff looks at the downcast, hapless curate with longing, yearning eyes for a minute and-a-half, and then, clasping her pretty, delicate hands on the ledge of the witness-box, exclaims:—

"Oh, yes—very, *very* fond of him!" and then she puts her lace-bordered handkerchief to her eyes, and plainly visible in her whole form is the deep emotion which stirs within her, as though some volcanic eruption were imminent. This touch of genuine sentiment does really make the jury look up for a moment, and every bucolic eye beams with sympathy. It was splendidly done, and you could not for the life of you tell whether it was real or the quin-

tescence of acting. At this supreme moment every female eye, moist with sympathy, was turned upon the defendant. Every feminine heart palpitated with an indefinable yearning; and every gentle bosom heaved with tender emotion. At this ecstatic moment what an interesting creature the High Church curate was! Never in any Court was produced such a delicate and delicious sensation! What a real living drama was being enacted! Then once more those lustrous, dangerous eyes of the plaintiff beamed at the faithless clerical swain over the damp handkerchief, and from their innermost depths welled out the passion of those bygone days; and, oh! what a depth it was! Very, very deep!

As the learned counsel for the defendant artistically arranges his papers, and with ceremonious dignity rises to cross-examine this heart-broken plaintiff, what breathless emotion there is in the galleries! Every lady readjusts herself, for the long anticipated treat is coming. They all expect her to be cut up, and her innermost heart laid bare. The scene will be nothing without this scientific anatomical dissection. All depends upon this cross-examination. The Church can hardly go into the witness-box and deny the promise or the breach. She may sit in Court and suggest questions, expose secrets, and otherwise assist the plaintiff; but there is no certainty about her submitting herself to the ordeal of cross-examination. The counsel needs to be subtle, acute and skilful, for he has to deal with a clever, self-possessed, albeit heart-broken, woman, who can see right through him, as though he were made of the most translucent glass.

"Now," he asks, with placid and gentle tones, "did you frequently converse with him about marriage?"

"Oh, yes," answers the plaintiff; "frequently—frequently. It was his constant theme."

"You liked it I suppose?"

"Oh, yes. It was agreeable." (A sigh.)

"You were desirous of marrying him?"

"Certainly. Why should I not be? I loved him."

No bashful reserve you see; no insipid hesitation. All was business-like and straightforward; pure as the stream and open as its course. So far so good. And the jury think she was pretty well up to her work.

"Did he tell you that his income would not permit him to marry?"

"Oh, yes; many times." (How she helps the learned counsel in his cross-examination!)

"And said he would not marry until he had a living of his own?"

"He did. Oh, yes; many, many times."

"What did you say to that?"

"That I would try and get him one, of course?"

Here there was considerable laughter; the learned judge himself moderately and judicially sharing the merriment. The javelin men and ushers all laughed, and all shouted "Silence!" and then gave way to their feelings again, all placing their hands in front of their mouths.

"Well," continues the counsel, "you never got him one, did you?"

"Not actually got it, because he refused to accept it."

"But did you get him one?"

This was a question too many; the answer was "Yes," and it necessarily led to further and better particulars. Having been put in cross-examination, it must be cross-examined upon, and that is one danger of a question to many. You have to try and get rid of it, to qualify or alter it, which you seldom can. It is like the letting out of water—the stream increases, and of its own force widens the breach.

"Where did you get him a living?"

"At St. Swithin's."

"Do you mean to say St. Swithin's was ever offered?"

"Oh, yes; and *I have the letter to prove it!*"

"We'll have that letter in," says Mr. Longfellow.

"Oh, yes, we'll have it in. I don't wish to conceal anything," says the High Church counsel, with charming innocence.

And then comes the letter, carefully preserved by the plaintiff, who valued every scrap of paper that bore the defendant's handwriting. It was a simple letter enough; one would have thought not worth preserving; but it turned out to be valuable in this way, that if the promise of marriage had ever been conditional, the letter proved that the condition had been faithfully performed.

The case, therefore, was well on its legs, such as they were, but a tottering sort of creature it nevertheless appeared, quite incapable of bearing any appreciable weight of damages. There had been too abundant spiritual excitement; too much slipper warming. The mystical union of souls had been

too frequently insisted upon; and it was somewhat difficult to ascertain whether the attachment had been the highly sublimated process of spiritual attraction, or the more worldly and more generally understood proceeding called "courtship." It will be tested, perhaps, by-and-by, and its true nature revealed.

As a rule, a defendant in a breach of promise should not be in Court, unless his personal appearance is a good defence to the action. In the present case, the defendant unfortunately was present, the silent and downcast spectator, as well as the object of intense admiration to all the female portion of the audience. He was at once a hero, a champion, a conqueror and a martyr. Up to this moment I envied him. It was curious to notice how, when any interesting question was asked, all the beaming female eyes were fixed on the pretty plaintiff; and how, when the answer was given (equally interesting), all those eyes immediately turned and riveted themselves on the reverend defendant. It must have been like sipping honey to the gushing fair ones in the gallery; and I believe the case was so exciting that the young ladies would alternatively have liked to be now the plaintiff and now the defendant. It was so inexpressibly sensational. At present, however, there seems but a remote chance of any damages that could be termed substantial. But now a phenomenal question shoots across the legal firmament, arising, no doubt, from special instructions, which gives importance to the case; the whole atmosphere, in fact, is ablaze.

"Is it not a fact," asks the counsel, "that the



defendant and you were three weeks in the house without anyone else being there ? ”

A pregnant question truly ! What a flutter there was in the gallery ! Now the scandal's coming !

“ Oh, the clerical profligate ! ” and “ Oh, — ” well let us wait. What, is she going to deny the “ soft-impeachment,” the mild imputation, the suggested profligacy ? Shame ! Are there no dark pious mysteries to be revealed ? no slumbering secrets to be awakened for the delectation of this excited audience ? Surely, something has been whispered by those consecrated lips into the learned ear of the enterprising counsel ! He would not, could not, as a Queen's Counsel, with a dignity and a reputation to support, have so alarmed the heavens with mere fireworks. Oh, no, something must come of it, if its only an earthquake. To change my simile, this love in a cucumber-frame, (I mean this clerical forcing-house) is not going to evaporate into sighs. We shall reap the fruit of our patient expectation in due time, because *no question is put in cross-examination without adequate motive, and without the utmost certainty that the answer cannot injure your client.*

The dear girl was taken all aback ; up went her handkerchief to her eyes, and she made a succession of bubbling noises very like what you hear when you pour water rapidly out of a narrow-necked bottle. After the water was all out the fair and broken-hearted promisee gave a little shriek, and cried—“ Oh, no—no—no, my lord ! Oh, no—*never* ! Oh, how cruel ! ” and she refused to be comforted. Everyone pitied her, except the counsel for the plaintiff, and they pitied the defendant.

"Now," says Mr. Longfellow's junior, "*you've got him.*"

"Hold your row!" says Longfellow, with a wicked expletive, in a small whisper. "I know! Now he shall have it! We've got him nicely!"

It took some time for the distressed plaintiff to recover her equanimity, and compose her nerves, because after such a severe shock to the physical, mental and moral systems several heart-rending relapses were necessary, and water had to be brought. You can't get over a big thing like that in a moment, whatever your courage and virtue may be.

I never knew why the question was asked, and if the reader thinks it over for a month he will be no nearer to a solution. At first I imagined it was to lay the foundation for saying that the defendant had seduced the plaintiff, as well as deceived her; but even if so, one could not perceive how it could go in mitigation of damages. Nor could I understand how it in any way went to the lady's credit. Nor how it affected either the promise or the breach. Truly it was one of those mysterious displays that, like erratic play at whist, defies all calculation and conjecture. But it finished the cross-examination, you may well believe, and very nearly killed the plaintiff. If it had killed her, it would have been the defendant's only way out of the difficulty; for Lord Campbell's Act could not have helped her relatives. But, unfortunately for him, such is the springiness or elasticity of the fair sex in actions of this nature that she recovered sufficiently to be re-examined—just sufficiently, and no more. And in what a grave and business-like manner she was re-

examined! All amusement had vanished. Things had assumed a serious aspect, approaching almost to indignation. The earthquake must come. The defendant hung his head, as well he might, repentant when too late, but bearing with Christian meekness and resignation the pitiless storm as it bore down upon him. From all sides the storm came; even from the galleries, because, after exciting the curiosity of the fair auditors with an appearance of approaching scandal, it was a shame to leave it ungratified. What! shall there be no stain upon the plaintiff's character? What could be the meaning of such a question unless it was to be followed up by at least an insinuation that the plaintiff was no better than she ought to be. It was cruel (not to her, but to the fair sex in the gallery), and the disappointment was unbearable. They quite assented to the volley of indignation which was indirectly poured upon the meek curate's head. There ought to have been something piquant after such a question; but not too much indignation, if you please, because you don't want to do all the punishment in re-examination, or even in your speech to the jury.

After all, the defendant may go into the box and deny the promise, or it may even be hoped he will contradict the lady about the house business? But no; he's only a spectator in the scene; he has come like the rest of the audience, simply to hear the trial, and probably to learn some useful lesson in human nature for the delectation of his congregation next Sunday. He contradicts nothing, and does nothing but hold down his head as Longfellow anoints it with a copious shower of delicate

invectives, and points to him with a substantial and well straightened finger of scorn as he says, "That's the man who dictates that foul insinuation against the virtue of the woman he has wronged." It was a good speech, was Longfellow's. You could tell from it that Longfellow was a father, and that the jury were fathers, and the jury nodded their fatherly heads as he glowingly recited the wrongs of the lady, extending, as they did, over a series of years, and culminating that day in the foiled attack upon her character in the witness-box.

Longfellow's speech was like a good clap of thunder; not the least uncertainty in its meaning; no one could mistake it for the ill-natured growl of an angry churl, and it did all the work which was required of it. Declamation was its chief feature, and aggravation of damages its main object. Now there was only one way to aggravate damages in this case, and that was by aggravating the feelings of the jury. You couldn't go into pounds, shillings and pence; all that was beside the question. The jury had *seen* the injured feelings, and they saw that no money within the probable means of the defendant would be too much to make him pay after the exhibition he had made of himself in Court. Mr. Longfellow's clap of thunder burst with blessings on the plaintiff's head, and down came a copious shower of golden damages. There was no need to awaken sympathy; no necessity to go into figures; and although the judge said they must not punish him even for the phenomenon he had insisted upon shooting into the heavens, the jury gave the plaintiff a verdict for a good many hundred pounds.

The fair sex drew in its breath, and speculated on its own chances of a verdict on some future day. The plaintiff was being comforted and soothed with sal volatile and eau de Cologne when the verdict was returned, and she just revived in time to be escorted out of Court by her sympathising solicitor before the fair sex could rush from the gallery and make her a gaping stock in the hall and the streets.

Everybody said it served him right, but no one said it served the plaintiff right. Let the student draw all necessary inferences. It is not for me to point the moral more significantly than by saying the action was for Breach of Promise to Marry, but the verdict was for Slander!

## ANOTHER BREACH OF PROMISE.

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### THE BLESSINGS OF POVERTY.

IN all cases tact and judgment are indispensable to success. What may be called "slogging advocacy," is of little use against art. To bring out the right point at the right time, and to call the right witness just when his evidence will be most effective, are often of vital importance to your client. To arrange your evidence, and to produce your arguments in due order, is as necessary in a cause as the proper disposition of troops on the eve of battle. A mob is no use to a disciplined army, nor is a confused mass of tangled evidence likely to be effective against the well-ordered case of your opponent. Although your cause may be right, the other will *seem* so. And juries generally, like other men, act upon what seems to be, rather than what is.

The illustration I am about to give is from humble life; and the advocacy to which I direct attention is not the advocacy of a professor in the art. It is a defence "in person"; but the "person" shows that he possesses just that knowledge of human nature which the professional advocate may sometimes lack. Low life, no doubt, is revolting to the fastidious

mind, but at the Bar you will do all the better by having some acquaintance with it. Human nature is not the monopoly of the high-born, the educated, or the wealthy. You will find a good deal of it lying about the slums; and if I mistake not, you will perceive a trace of it in the following case. I am not about to give an instance of brilliant oratory or ingenious cross-examination. The lesson is a lesson in tact and judgment; in the mode of dealing with evidence, and, albeit, uncouth and rough, in the manner of disposing of its effect. It will show you, indeed, by a rude and unpolished example, how a case should be handled. I suppose a pauper's body would be as good for anatomical purposes as a body which died worth a million. The same kind of nerves, the same kind of tissues, bones, limbs, muscles, and organs.

But will students condescend to learn advocacy from a coffee-house keeper? And if not, may I enquire why not? Let us recollect that advocacy is not fine language. You may quote Cicero, and make a bad speech, or you may make the most tremendous oration, and not know how to cross-examine. A good case made against you will be hopelessly fatal unless you know how to deal with it. Is it possible then, that an illiterate uncultured coffee-house keeper can tell us how to deal with the points of a case so as absolutely to destroy them? What does he know of advocacy? He knows nothing in the artificial sense; but, having a knowledge of men, he stumbles over the facts made against him and tramples them out of all shape and consistency. He was not present when the case began, and so it was

opened as undefended. It looked an easy winning case, and one for considerable damages. The plaintiff was young and pretty: you would almost be inclined to give her five-and-twenty pounds for being so pretty. Her looks deserved it. I mean that a fascinating plaintiff is almost sure to win her way with the jury. Juries are so human. And the appearance of a plaintiff or a defendant, if of the weaker—that is the stonger sex—is always a *factor* with which the advocate must reckon. The learned counsel opened the case remarkably well. There was not a word too many, nor a point too few. He was a modest junior, and assumed no airs; attempted no jokes and ignored all attempts to evoke sympathy.

The pretty plaintiff gave her evidence in a very nice, calm, unaffected way. Told of the promise and the breach, in such a simple manner, that the artless conduct of the defendant spoke for itself. It was apparent to all who heard her, especially to the jury, that a man who would not marry such a loveable and loving creature when he had the opportunity ought to pay for his folly.

Unfortunately, just as the judge was about to sum up, in came the defendant. What a marvellous sensation was produced by his appearance! And what an insight into human nature he must have had! He was unshaven, ill-clad, I should say unwashed, and was got up (without appearing to be so) in the most unattractive manner you can imagine. His appearance quite *lowered the plaintiff* in the eyes of everyone in Court. If the jury would give something for her beauty, they would certainly award nothing for her taste. Damages decreased therefore on the



view of the defendant, as much as they had gone up on that of the plaintiff. So they are now on a level. That was the first good point the defendant made. I am quite aware that counsel could not have made this point for him so effectively ; but he might have made it, nevertheless. How ?—will be asked—how *could* he show what kind of man the defendant was ? I answer, by cross-examination. If he could not produce the original, he could exhibit a picture of him, that is, if he were skilled in the art of presenting a picture by cross-examination. He certainly could not do it by bullying the plaintiff, although he might have considerably increased the damages. If you are not an artist, you need not smudge everybody who comes into the witness-box with a tar brush, and think you are touching up their complexions—that is not the way to make yourself look beautiful, even by contrast. But now comes a second view of the defendant. You can perceive that his knowledge of the points of his case is perfect and that he knows how to deal with them. You will also see that he puts them artfully if not artistically ; and forcibly, although not scholarly. He has no elocution and no oratorical powers as the learned impute oratory ; but he can speak so as to persuade, and argue so as to convince—two good qualities, I apprehend. He can cross-examine, too, although he has not had an hour's practice. He asks just the *questions that are likely to produce favourable answers*. He understands what he is doing, and why he is asking every question that is put. He knows what is wanted, and his principal object is to convince the jury that the occasion of the breach of promise was

not his ; that, although he broke the promise, it was *in consequence of the conduct of the plaintiff herself*, for he was anxious to marry her. His object was to reduce the damages to a minimum. Now, observe how he does it. You may learn it from this natural advocate as you may learn what motions are necessary in swimming from watching the evolutions of a frog in the water.

And first, let me say, *he did not cross-examine as to the plaintiff's character*, nor did he make any imputation upon it. The common trick too often resorted to of trying to blacken your opponent's reputation to the infinite damage of your own client, was not the coffee-house keeper's way of advocating his cause. Wherever he had learned it he knew better than that. Secondly, he did not deny the promise or the breach : he was not foolish enough to attempt the impossible.

I have heard advocates say never admit anything. The coffee-house advocate knew better. In civil causes, *whatever cannot be denied had better be frankly admitted*, and for this principal reason, that the *proof may damage you more than the fact proved*. It is often the *evidence* and the surrounding circumstances that you have to fear more than the thing itself. They may aggravate the default and exaggerate it, distort it or make it look infinitely worse than it is.

The student, no doubt, is thinking, "What can this man know of cross-examination ?" Let the student put the same question to himself. We shall see. He cross-examines for the purpose of showing what led to the breach. There could not be a better purpose,

and it was one which involved a reason so natural that the jury could see it at a glance—not only see it, but calculate it in pounds, shillings and pence. The reason why he broke off the engagement was *coldness on the part of the plaintiff*, and when the jury looked at her and then looked at the defendant, it was manifest that she must turn cold, even if she did not freeze. How could such a man inspire warmth? His looks and manner were below zero ever so many degrees. No pretty girl twenty years his junior could warm herself up to a matrimonial and enduring heat.

Notwithstanding all this, he was, I believe, a most respectable, well-to-do tradesman, but he was a consummate actor and a good advocate, although he made pretensions to neither character.

Now comes another point. He asks about a letter in which he had complained of her coldness.

“Had he given notice to produce?” asks the counsel for the plaintiff.

“Oh, no, my lord! I aint acquainted with the forms of law. If I had had the *means of employing counsel*, I should not have been in this predicament.”

No; but he might have been in a worse. So he says if he had but been able to procure legal assistance he would have made her produce a letter which would have shown the sincerity of his affection and his complaint of her coldness towards him; three good points in a cluster, but distinct and clear as windows with a light behind them.

“But you shall have every opportunity,” says the learned judge. “You shall not suffer because you cannot afford to have counsel.”

I presume the reader perceives how the defendant is getting on in the way of reducing damages, and probably believes he could not have done it better himself.

"Thank you, my lord," says the poor man most reverently. "I couldn't afford to pay my solicitor and so he wouldn't go on with the case."

"Very well," says the judge, "what is the date of the letter?"

"It was while she was away in Cumberland, my lord. It would be about March. I wrote to ask her when she was going to return, as I had five children, my lord, and no one to look after them."

"Five children!" exclaims his lordship, with astonishment. "Why, how old are they?"

"One is seventeen, my lord, and the youngest is two."

Damages are certainly lessening. This is quite an unexpected style of advocacy, but so effective that no counsel could have surpassed it by any manner of eloquence or cross-examination. These five children come in just at the right moment, and the jury see them hungry and ragged.

"Have you got that letter, Mr. Jones?" asks his lordship. What a fuss there is about that letter, to be sure!

"Oh! yes, my lord; here it is. It shows the promise clearly. I read part of it in my opening."

"Yes, but now the defendant is going to read the other part.

There it was, truly enough, a good, honest, manly letter, asking the plaintiff when she was going to return, and stating that he was anxious

to get married as soon as possible, as his business *was going to rack and ruin*. He could not afford to have a housekeeper, and there was no one to look after his five "motherless children."

"What do you make of that?" asks the judge.

"My lord" says the defendant, "I want now to show what answer she returned to that letter which was the reason of my breaking off the engagement which I confess I did, and believe any man would do if he received so cold a letter as this here."

The letter was handed up, and certainly it did not breathe any very warm sentiments. It was a business-like affair altogether, but still did not warrant a breach of the promise to marry. Damages still decreasing, that is clear, because not much injury to feelings—feelings not up to anything like matrimonial point as you would expect in one so pretty—the letter, indeed, reads somewhat pert; she is not quite a scold, but a very indifferent lover evidently.

"Very well," says the judge, "but now then you must pay, it is a question of damages only."

Then the counsel cross-examines as to the defendant's position, so as to show how much *pecuniarily* the plaintiff has lost, that being apparently her only claim now, as injured feelings are no longer a marketable commodity. The defendant, however, is as good at answering questions as he is at asking them.

"Now then," says the counsel, "You live in a house of £120 a-year rent, don't you?"

"I don't deny that," answers the defendant, "And that is what makes me so poor; if I was the landlord it would be different."

That seemed to strike the jury as a common-sense argument. It is one thing to have to pay and another to have to receive £120 a-year. Heavy rent does not usually make a tenant wealthy, and of this opinion seem his lordship and the jury.

"And more than that," says the defendant, "They've nearly doubled my rent this last year, and that has nigh doubled me up. I could hardly get a living before, and now I don't know how I am to live. The business is worth nothing."

"But you've got some other property, haven't you?"

"Yes I have. I've got these here pawn tickets," producing about a dozen.

There was a peal of laughter at this stroke of business. Pawn tickets may be a valuable property, but they don't usually indicate affluent circumstances, especially when they relate to a watch, a great coat, a silver buckle, an arm chair and a hat.

"Do you mean to swear, sir, that you have no money?"

"I do," says the witness; "they thought I had."

"Why do you say that?"

"Because they was always trying to get some out of me."

"Who do you mean by they?"

"Why this plaintiff and her father, the old gentleman who was a witness."

"How did they try to get your money?"

"They took me to a place where they had got an old painting about eight feet long by six, and wanted me to give £700 for it. As I told them, I hadn't got 700 pence, and if I had what was the use of a picter

of that size to me? What's a man in my position want with one of these here old masters."

"Now sir," asks the counsel, "do you mean to swear that you have no money in the bank? I warn you she has sworn that you told her you had."

"Its quite right, my lord, I did tell her, and here's my banking book, and your lordship will see that I have put a few shillings a-week in the saving's bank for the purpose of paying my rent, and hard enough it is to scratch it up."

His lordship looks at the book and finds that he has never had more than £7 10s. in the bank. Not a great amount certainly; and so far as one can see up to this point, if the marriage had taken place, the lady would have acquired no very affluent position out of five children, a number of pawn tickets, £120 a-year rent, and a few shillings in the saving's bank.

"Now tell me, did you not break off this engagement because you were going to marry a widow with £900?"

Here there was great laughter in which the defendant joined, and then answered:

"I only wish it was true. I should very much like to marry a widder with £900, or for the matter of that I'd take less. I wouldn't keep a coffee shop long."

The imaginary "widder" having been thus promptly disposed of, there remained one other point to cross-examine this prosperous defendant upon. If he possessed a really flourishing business the fair plaintiff had lost a home of some value, and the measure of damages must be estimated thereby. To ascertain then the estate of the defendant and his capacity to

pay damages is the next object of the plaintiff's counsel. As a rule, I think this part of the business dangerous to venture upon except you do it in the most general way. If you enter into details you may be sure the defendant has prepared himself for every question. The position of a man as a general rule is a better test of his capacity than the items of his expenditure. If you get the style of the man the jury will apportion his income to it; but if you try to get at his income you may find that he places himself on the brink of ruin. This proposition of course does not apply to fixed and determined positions, which go either with or without proving, and concerning which you may make your choice with safety.

"Now," says the counsel, "what are your takings?"

"I have not taken much lately," says the witness, producing a dirty red memorandum-book.

"We have been told you take £7 a day?"

It was hardly a question, but it did duty as one.

"I suppose the old gentleman told you that; it's just like him."

This answer provoked much laughter; the learned judge himself could not resist. For a time it was doubtful what "old gentleman" was meant, and everyone supposed it was the particular "old gentlemen" so often referred to by persons who have a lively faith in his personality. It really referred, however, not to "the Father of Lies," but to the father of the plaintiff, who was shown by the defendant to have been a very active agent in the promotion of this breach of promise. But the dirty book is produced,



and the defendant is asked "what he has got there," generally a dangerous question enough, for, like a needle, it often draws with it a thread of evidence that stitches the parts of a ragged case together.

"*It's an account of my takings,*" says the melancholy creature; and the book being handed to the judge shows £7 a-week instead of that amount per diem. A very carefully kept book it was, not concocted as you can see, and it extended over several months, *as long at least as the legal proceedings had been on foot.* The witness then goes into the cost of bread and butter, coffee and general expenses, not omitting the milk; and there being a milkman on the jury, he knows that that is an important item, water it as you like, in a coffee-house business; so that on the whole the wonder is how the man can support his five children, and why the whole family is not in the workhouse, or singing doleful songs in the streets.

What is to be done? The more you cross-examine this witness the worse the case looks, so the learned counsel wisely leaves him to my lord and the jury, weary of a hopeless task. It's like pushing a jibbing horse uphill.

My lord tells the jury that the proper measure of damage is what the plaintiff has lost by not becoming the wife of the defendant (and as Roscoe puts it, "*the affluent circumstances of the defendant are evidence on the question of damages*"); his lordship also says the injury to the plaintiff's feelings may be considered. Two items therefore to be assessed.

The jury consider these "affluent circumstances," and this "injury to the plaintiff's feelings," and give

effect to the conclusion they arrive at by the following verdict:—

“My lord, we finds a werdick for the plaintiff with 40s. damages, and thinks as how she have had a werry narrer escape, and is well out of it.”

Judge agrees with the jury, and does not allow costs, which was as bad as if the solicitor for the plaintiff had been the defendant and lost the verdict. This was the best defence to an action for breach of promise of marriage I ever heard. If you wish to cut down damages this coffee-house keeper has shown the line to take. A chorus of voices says “of course!” But it is by no means of course; not one advocate in twenty could have done it. Most of them would have tried to break down the plaintiff on the promise or breach, or have endeavoured to show that the man was justified in breaking the engagement on account of the character of the plaintiff, and this, as a recent case has proved, is the most dangerous of all defences. It cannot be too frequently impressed upon the mind of the advocate—*leave character alone unless it is material to the issue or fatal to the credit of a witness.*

The usual mode of dealing with this case would have been to fly at the plaintiff with the object of showing that she was unworthy of belief, and that she released the defendant from his promise. Somebody's character would have been attacked, perhaps her father's, or her mother's, or her grandmother's, or the solicitor's, or even the conduct of the plaintiff's counsel. Anything and anybody rather than *the issue*. Usually an eloquent speech is made against the policy of permitting such actions. But the judge,

having to sum up after the eloquent advocate, does not permit the main issue to be shunted, and the jury to be trailed along by a false scent on a fool's errand. There may be differences of opinion about the advisability of abolishing actions for breach of promise; but the question for the jury is whether there has been a promise and a breach, and if so what damages. The jury are not a public meeting to carry resolutions for the amendment of the law, but to take the law as it is from the judge and enforce it by their verdict.

## AN ACTION ON A COVENANT CONCERNING A BILL OF SALE.

SHOWING THAT THE MOST VIRTUOUS OF MEN MAY FAIL  
TO OBTAIN THE APPROBATION OF A JURY.

Who is this benevolent old gentleman strolling down the hall with a barrister? What a beautiful Rembrandt picture! The white whiskers and flowing beard, and the silvery hair are thrown into striking relief by the half religious gloom which is cast by the huge dark gothic roof above. His shoulders have a slight stoop, as though he had long been in the habit of offering consolation to the afflicted. He looks not unlike an elderly physician. His head, thrust slightly forward, reminds you of the well-known picture of the great Duke: only his features are not so iron-bound, and his nose is not so warlike. As he passes the lofty window through which the sober light streams, he looks almost glorious. His smiling countenance impresses you with its saintly glow, and seems beatific with more than human holiness. Wonder as you may, you will never guess who this semi-glorified gentleman is, nor what his mission. His respectability is manifest to the world, and is evidently a respectability produced and nurtured under exceptionally favourable circumstances. What a growth of goodness is here!

Tropical goodness, my friend; not the stunted, careworn sapling that lives, if it do not thrive, in the chill atmosphere and hungry soil of poverty. He has probably come from a May meeting, and is in quest of some object upon which he can lavish the overflowing compassion of his bountiful nature. What anxious conversation he is holding with his meek-looking barrister friend! Perhaps he is consulting him as to how he may best provide for some destitute orphan, or distressed widow. There can be little doubt he is on the watch for some helpless waif drifting hopelessly on the troubled tide of humanity.

I don't like to be too prying into people's affairs; and although I am writing for the amusement and not the instruction of youth, it may perhaps be pardonable to look a little more closely into the movements of this illustrious and almost luminous man. Let us follow; for, although you may not possess the means of alleviating sorrow yourself, it is always pleasant and certainly inexpensive to see it done by others. Benevolence administering to distress is a heavenly picture!

They stroll up the steps before us on the right, and, gently pushing the door as though they had no wish to hurt it, disappear from our view. We follow humbly and find ourselves in a Court of Justice. As we enter, the case of *Hawk v. Sparrow* is called on, and the learned counsel whom we have seen opens it—admirably opens it. Poor Sparrow, there is no chance for him evidently! What a wicked sparrow he seems to have been! Years ago, it appears, he was a market gardener, and had befriended a grocer, by lending him, from time to time, sums of money,

which at last amounted to £150, and for as much as the grocer, whose name was Thriftless, had nothing to pay, Mr. Sparrow asked him for a bill of sale on his household goods. Mr. Hawk, being Thriftless' lawyer, drew up the bill of sale, and Sparrow advanced a sum of £30, taking the bill of sale for £180. Thus the money was secured, so far as a legal document could accomplish that object. Some time after, Thriftless, going from bad to worse, gets into liquidation and so wipes out his debts; but Sparrow has nothing to do with the liquidation, and after the proceedings were over, Thriftless continues to pay the interest on the bill of sale: an illegally immoral proceeding, no doubt. Now, Sparrow was to pay Hawk for drawing up the bill of sale, in the event of Thriftless failing to do so. Thriftless did fail to do so, and then Hawk applies to Sparrow. Upon this, Sparrow says in his little chirping way, "I can't be bothered about this thing for ever; I thought it was all settled; but I will tell you what I will do. If you like, Mr. Hawk, you shall have the bill of sale in satisfaction of the costs incurred in drawing it up, and some few pounds I owe you for other matters"—all incurred through Thriftless.

Hawk flies at this proposal, with his talons wide spread, and takes the bill of sale in satisfaction, and there the matter seemed amicably ended. This was twelve years ago. Time rolls on, and now Hawk, having grown grey in the pursuit of his profession, sues Sparrow *on a covenant in the assignment of the bill of sale*, which was to this effect:—Sparrow covenants with Hawk that the said debt was *a good and subsisting debt*. The counsel opens that it was

*not* a good subsisting debt or a subsisting bill of sale at that time, because all liabilities had been washed away by the flood of liquidation proceedings.

The judge nods his head at this, and evidently thinks it an undefended case. The judge is "against the defendant:" expresses himself to that effect, and counsel for the defendant seems in bad case. It's an up-hill fight when the judge is against you; but if you believe your sparrow has a feather to fly with, you ought at least to afford him the opportunity of a little flutter. Perhaps the judge doesn't know your case, and may alter his opinion when he does.

"What answer to this have you got, Mr. Jones?" asks his lordship.

Now Jones, be firm! don't disclose your case even upon this seductive invitation before ever your opponent has made out his own. Let us first of all *see what case the plaintiff has, not upon the opening, but on the evidence.*

It is as dangerous a proceeding to disclose your hand prematurely as for a general to send to the enemy a message informing him that at a particular time he should take possession of a certain pass, make a flank movement on his enemy's left, throw out his right wing, and then, covered with artillery on the north, totally envelope the opposing forces.

As the judge asks the question, just glance your eye at your opponent and see with what an eager glance he awaits your answer. But if you are wise you will not satisfy that watchful glance. He is turning over the sheets of his brief and looking you hard in the face all the while. But you *must* answer his lordship, and so you say you believe you will

satisfy his lordship when your turn comes ; at least, if your instructions are correct you have a complete answer. You may be young, no doubt, and your opponent may be old and wily, but you have lived long enough in the world to know that he cannot catch even a sparrow by putting judicial salt on his tail like that.

“Very well,” says his lordship ; “only it seems to me you are bound by the covenant.”

“Not till after verdict, at all events,” thinks the imperturbable Jones ; so he says respectfully :—

“I hope to alter your lordship’s opinion when you hear the case. At present my friend has called no evidence.”

“Oh, don’t let me interfere, I pray !” says his lordship.

So not a man of Jones’ troops moves, and there is no message sent to the enemy of his intended operations. Possibly, Jones may take him in the flank or rear by a well-concerted line of action by-and-by. We shall see.

But here is that very same benevolent gentleman stepping into the witness-box, and now he looks a saint indeed with the precious Testament in his hand. This is Mr. Hawk himself. How beautifully he gives his evidence. You almost parody the touching line of Watts :—“How neat he spreads his bird-lime !” Never was evidence more fairly and temperately given, and if ever there was a counsel who knew how to examine a witness-in-chief it was Hawk’s. He never omitted the smallest material detail. He reminded me of a sharp boy piecing together a puzzle map of the world. One after another in went continents,



rivers, rills, hills, dales, lakes, waterfalls, and everything that goes to make a complete hemisphere.

The learned counsel left out nothing, not even so small a county as Rutland ; but I *have* known boys leave out not only a county, but a country as large as Russia, and then wonder why their world is not complete, and abuse the maker of the map. Depend upon it no case is complete unless you have all its parts ; and it was a *knowledge of these parts, and of their relative positions with regard to the whole*, which made the learned counsel for the plaintiff in this case so formidable an antagonist. It seemed impossible to get over this well-adjusted evidence. Not a gap or a fissure was visible, every tree and ditch were there. Nothing daunted, however, the placid Jones commences his cross-examination after the manner of a man who feels that there is a wrong adjustment somewhere. He has to get rid of that covenant which his lordship seems to believe an impossibility ; a covenant being a very hard and fast sort of obstacle, and albeit twelve years old none the worse for wear. Now, who ever heard of cross-examining a covenant out of Court ? How can you cross-examine a fly out of a spider's web. No spider ever heard of such a thing since spiderdom became an institution. Otherwise what's the use of webs, and what the necessity of flies ? Webs as you know are fastened by means of guy-ropes to the sides of beams or walls, and if you wish to bring down the web, you have to detach first one guy-rope and then another till the centre portion, being unsupported, comes down as it must.

The cross-examination has been evidently prepared, and every question is carefully and skilfully directed,

to a particular point—not always straight, mind, but always towards the object.

“Did you know a Mr. Wobbler?” asks the counsel.

The apostolic being reflects: *did* he know Wobbler? he mentally repeats. “What does he want to know for? No, yes, no!”

“Which is it Mr. Hawk, no or yes.”?

“I really cannot say; I think I have heard the name, but its many years ago.”

“Let me refresh your memory. Was there a man who used to take possession for you when you put in executions under bills of sale?”

“Dear me, that is an extremely awkward question,” thinks Hawk, “Execution and bills of sale! Bless me! what will the jury think of me?”

“You are a solicitor, Mr. Hawk, and ought to be able to answer without hesitation.”

“Let him answer,” says his counsel. Question repeated. Hawk pulls down his gold eye-glasses as though they had been the cause of his hesitation, and says: “Oh yes, to be sure! I do remember now, there *was* such a person—to be sure.”

But what has this to do with the case, some county court judges would ask. It seems utterly irrelevant to the question of this covenant, as to whether years ago the respectable plaintiff knew a particular person.

Yes, your honours, so it does; but your honours, as I have often perceived, do not know everything, and as a rule, cannot be supposed to understand a line of cross-examination, which does not go through the exact issue like a thread through the eye of a

needle. But your honours must be aware, if you have ever been riflemen, and had any practice at the target at long range, you never aim at it but just above or below, or at the left hand or the right according to circumstances. You have to allow for "pull and windage."

So the cross-examination proceeds on the usual lines which, seemingly crooked, are as direct as possible, and find the real issue as certainly as the streamlet, intercepted never so many times in its course, and twisted and turned in never so many uncertain ways, finds at length the point of junction with its river or lake.

"Did Wobbler ever take possession for you under this bill of sale, Mr. Hawk?"

"Oh, dear, no!" says Mr. Hawk, quite shocked at the preposterous wickedness of the suggestion.

"Stop," says the learned judge, who from this moment perceives the line of march.

"You say, Mr. Hawk, he never did?"

"Oh no! my lord, certainly not."

"Just look at this letter," says the cross-examiner. Mr. Hawk fusses with his glasses, and finally adjusts them with an air of confidence, like one about to look the truth in the face without being ashamed of it—as an eagle would face the sun.

"Is that your writing?"

"I have no doubt it is—yes."

Letter read, giving instructions to the said Wobbler to take possession of the goods included in the bill of sale *the day after the assignment to Hawk was executed by the defendant.*

A startling revelation, truly! quite takes the

learned counsel on the other side by surprise ; nevertheless he makes a motion indicating that he knows how to get over it. However, he can't leap the ditch, and therefore knows he must wade through it somehow, there being no plank long enough to bridge it.

"But," says the plaintiff, quite gratuitously and quite as foolishly, "*he never did take possession.*"

Then the question, "Do you swear that?" acts like a bearing-rein—his head is instantly jerked up. He evidently doesn't know whether to swear it or not, but at last thinks it better to swear it.

"Now, look at this letter," says the cross-examiner ; it is in the plaintiff's handwriting, as sure as he is in the box, and bears clear reference to the taking possession by Wobbler, and actually *asks for an account* of the things he seized.

But now passes through the mind of the wary Hawk a clear, good defence for the time being. He remembers that he told Wobbler to take possession, but he remembers also that Wobbler never did, and remembers it for this excellent reason, that Wobbler never gave him any account.

"Where is Wobbler?"

The plaintiff doesn't know ; hasn't seen him for years ; may be dead for ought he knows.

Then he is asked whether Wobbler did not sell every article of furniture that poor Thriftless had, even to his bed.

Hawk scornfully repudiates the insinuation. "Certainly not ; never a farthing's worth"—this with great indignation.

It was straightforward swearing enough, and unless the counsel really understands the business

of cross-examination as being something different from the knack of putting impertinent questions, this Hawk will fly away with his Sparrow after all and make a meal of him.

So he asks :—

“Do you swear that positively of *your own knowledge*, or do you swear that you *never heard of it*?”

Now, then, Patriarchal Hawk, what sayest thou? It appears to me that that is a question which, answer it as you will, you are caught as nicely as any foolish bird that was ever lured into a net. And this is a good point to remember in cross-examination, that, if by a series of questions you can arrive at one, the answer to which *must* damage your opponent, you have almost made a cripple of him.

The plaintiff being a shrewd man sees his position. He is surrounded by the enemy. He looks, not in front of but *within* himself, pauses, balances his gold spectacles, and is evidently balancing something else, namely, the respective value of alternative answers. They seem pretty equal so far as he can judge. Any answer will be awkward, may be fatal, yet answer he must.

But while this mental process is going on Jones' mind is also at work. He reasons that if he is fairly skilful he will not only get an answer to one charge of his double-barrelled question but to both, and *both answers shall be dead against the witness*. In order to effect this object he does not rally the witness and drive and goad him, so as to tempt the jury to believe he is simply bullying the man out of his wits, but proceeds quietly as though he were assisting him, breaks the difficult question in two,

knowing well enough from the witness' reluctance what answer he will at last squeeze out of him.

"Do you *know*, Mr. Hawk, that Wobbler did not take any of poor Thriftless' goods?"

Suppose Hawk says yes? the next question would probably have been *How do you know it?* and the next *why* should you know it after the full instructions conveyed in the letter that has been read in Hawk's own handwriting? You can see there is something in Jones' hand which is kept well up, and it must be a good card or he would not be so confident in his play. Why should Hawk *know* that Wobbler had not carried out his instructions? and how?

The how must be that Wobbler must have told him, and the *why* would have led to the exact fact which presently is proved. So the gentle student perceives as clearly as though he were cross-examining himself that Hawk is well bird-limed, that he quivers on the bough, and oscillates between a yes and a no, and casts about to see what intermediate equivocation will answer his purpose. Then is he neatly pressed in the following manner:—

"Mr. Hawk, it's a very simple question—did you know it or not?"

Hawk wants a little more time, so asks that the question may be repeated; and whenever this takes place rest assured there is at least one mark scored against the witness in the jury-box.

Question repeated, "Do you know that Wobbler did not seize the goods of Thriftless under the bill of sale?"

"I know I never had one penny-piece for my bill of sale."

Still no answer, but a clear indication of what is to come.

“Answer me, Mr. Hawk.”

Mr. Hawk says there was no seizure.

“*How do you know?*”

That has fixed him. He cannot move. He dares not answer. But here Jones, for a purpose, leaves this part of the question and presses the second part in a new form. Have you heard that Wobbler never seized?

Hawk wishes he could pulverise Jones, for this question looks ten times worse than the other.

“I never got a farthing,” exclaims Hawk in despair.

“You must answer the question,” says his own counsel.

“I *did* hear he never seized,” says poor Hawk, and now he is up to his very beak in difficulties.

“Who told you?” asks Jones, with irritating perseverance.

Well, who could have told him but *Wobbler himself*; so he is obliged to admit that Wobbler himself told him.

Now, mark what this leads to, seeing that he has never *seen* Wobbler since he gave instructions to seize. It leads to the fact that Wobbler *must have written to Hawk* about the matter, and, probably, *after* Hawk had, as is proved, written to him *for an account of the sale*.

“Did he write to you?”

“I suppose he did.”

“Have you got that letter?”

“Oh, dear, no!”

“You have had notice to produce it.”

“I dare say.”

*Copy letter from Wobbler to Hawk of ten years ago produced.* Objected to, of course; withdrawn; Jones doesn't care a farthing, but asks Hawk what it was that Wobbler told him in the letter. Presses him hard on this point, and at last, when there is no escape in the wide world for this sagacious bird, he confesses that *Wobbler told him the goods were of no value and would not pay expenses.*

Anybody would have thought, to see the placidity of Jones' face as he sat down, that Hawk was his dearest friend.

Now, then, Hawk's feathers have to be smoothed by re-examination, and a very pretty process it was.

“Oh, dear, no!” says, plaintively, this martyr-like being; “not one farthing had he ever had. He really did not know anything about a seizure by Wobbler, only what Wobbler had said in his letter, which, unfortunately, he could not find. He shouldn't have seized, and then brought this action years after. Oh, dear, no! He did not ruin Thriftless, certainly not; thinks Thriftless must have been consumed by spontaneous combustion; was for many years in practice, and, although was Thriftless' solicitor, was not aware at the time he took the bill of sale that Thriftless had been in liquidation, and it was a shame to suggest that the covenant about its being a subsisting debt was artfully inserted by him because he knew it was not a subsisting debt. Oh, dear, no! nothing of the sort. Couldn't take advantage of Sparrow's ignorance in that way. Quite against his principles. Then as to this Wobbler; he



had not heard of him for years—insinuating that Wobbler was a rascal.

At all this the jury smile sardonically. Clever re-examination, no doubt; and they smile at the wonderful cleverness of the counsel, and the artfulness of the patriarch. There was the bond, and although the greater part of the amount for which Hawk took the assignment of the bill of sale *with the covenant* was incurred in the preparation of the bill of sale by him, yet what could be clearer than the bond? Nothing, except the admirable manner in which the case of the plaintiff was being conducted.

“Oh, you lawyers!” was written on the face of every jurymen.

The case is getting interesting. The judge has long ago seen through it; but we must wait for the evidence which has been foreshadowed by the cross-examination.

Now, when the reader has well considered the points of the cross-examination, let him remember that at present all is suggestion, and if he had to go to the jury upon the case as it stands, he would have to insinuate three things. First, that Mr. Hawk *had knowledge of the liquidation before he got the defendant to sign the covenant*, that it was a subsistent debt. If that point be established, the plaintiff will not win. Secondly, that the defendant was not aware of the nature of the covenant he was induced to sign. I need say nothing further upon these points, because the whole arguments and inferences will flash like lightning before the mind of the intelligent reader. Thirdly, and of greater force than the other two, there was the suggestion, amounting almost to cer-

tainty, that *Wobbler did seize the goods of Thriftless and that he sold them*. Whether he gave over the proceeds of the sale to the plaintiff or cheated him out of them, is of no consequence to the jury and not relevant to the inquiry. Those are the inferences if you do *not* call evidence, and even upon those inferences the verdict would probably be for the defendant. But having evidence of a conclusive character, Jones' able junior calls first, the defendant, who deposes to this effect :—

“ Knew nothing of the nature of the covenant. The plaintiff knew as much as he did of the circumstances of Thriftless (the jury think a great deal more). So, in spite of the original strong presumption that Thriftless, signing the covenant with his eyes open, knew what he was about, the jury believe he did not know the significance of the legal jargon contained in the covenant. They do not seem to think that a market-gardener is so well versed in the technicalities of legal documents as a shrewd lawyer who had been half-a-century in practice. The jury know that market-gardeners are not usually great lawyers. Raising cabbages does not require so much pettifogging technicality as raising points or sowing the minute seeds of a prolific lawsuit. Next, and to the great surprise of the plaintiff, poor Thriftless himself was called.

And now I ask the reader's attention to some very important points in the conduct of a case, namely, those of examination-in-chief, cross-examination and re-examination.

Says poor Thriftless :—“ I was indebted to the defendant, who had been very kind to me. He had

lent me money from time to time, and at last he would lend me no more without security, so I gave him a bill of sale. Afterwards I became bankrupt."

"Did the plaintiff know of your bankruptcy proceedings?"

"Of course he did."

"Why, of course?"

"*Because I consulted him about them.*"

Here the benevolent gentleman protests, by gesture and facial distortions, that this is the largest amount of perjury ever committed at one time.

The witness and plaintiff had been neighbours. The plaintiff had been his legal adviser, and they used to meet and talk occasionally about 'Thrifless' affairs. Grimaces, therefore, are no answer to such presumptions as arise from these facts.

"He told me," says the witness, "what solicitor to go to about my bankruptcy."

"Oh, did he?"

"Yes, certainly."

Poor old patriarch! What a liar he thought this witness. How a man could, &c., &c.

The next piece of evidence was that not long after, when he had got nicely settled again, his liquidation proceedings being over, and he had collected a few sticks around him, in comes Wobbler with this very bill of sale, says he has come *from the plaintiff*; and produces a letter which was *read to him, from the plaintiff himself*, and seizes every stick he had got. There were carts worth £14, there was a considerable quantity of plant which had cost £80 to set up and for which the money was borrowed of the defendant. There were tables and chairs, an eight-day clock, a

mangle, a grindstone, and, above all, a nice feather bed that he and his wife slept on. All these with other things were taken under the bill of sale. Altogether, about £60 or £70 worth, even if they had been sold by auction.

This was a surprising revelation to the benevolent gentleman, because he had sworn he never had a penny; knew nothing about any seizure, and, in fact, alleged that it was the defendant who had seized the things. Mistakes of this kind will sometimes occur; but the jury would have to judge of all these facts and of the presumptions therefrom arising. They would surely think it strange for a man to sue for a breach of covenant, which covenant was that it was an existing debt, *after the plaintiff had so far made it an existing debt by selling a man out of house and home upon it and taking his bed from under him.* But perhaps the cross-examination will set matters right, as it sometimes does.

“Now, sir, will you swear that it was not the defendant who seized the goods?”

“I wool.”

“Did the defendant never seize?”

“No, he never did.”

“Will you swear that?”

“I wool.”

“Did you not have an execution put in once.

“Yes, twice.”

“And didn’t the defendant produce the bill of sale and turn out the execution creditors?”

“No; but that there man did—the plaintiff. He produced ’un, and——”

“Well, didn’t the defendant take possession?”

“In that there way he did.”

“Just answer me this. Did you ever see the plaintiff after Wobbler, as you say, seized?”

“I did?”

“When?”

“Several years arter.” (The counsel sits down).

“Well?” says Jones, in re-examination, “He asked me for more money and I says—“I couldn’t help swearing, my lord—I says, why you’ve stripped me naked. D’ye want to skin me as well?”

Has the reader any doubt as to how the verdict would be after this?

The benevolent gentleman was suing on his *bond*. Come Portia, come Shylock! It is not disallowable to refer to plays or historic characters by way of illustration. There is high authority for it. A striking parallel is always well received and generally effective. What did it matter now that Wobbler had cheated his employer? The bill was not given to cover Wobbler’s delinquencies; it was only given to cover Thriftless’ debt to the defendant, and as the plaintiff’s agent had already received *thrice its value*, the jury returned a verdict against him.

It is often difficult to form a correct opinion of the merits of a case from seeing one side only. Even a bond may have no merits, and may be cross-examined out of Court. Who can tell the configuration of the invisible hemisphere of the moon?

Caution and patience were the cardinal virtues, adjustment of facts the mechanical agent in this case.

## “A HOPELESS CASE.”

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### AS TO UNPACKING A JURY.

My next case seems to contain instruction for a young and intelligent advocate, but I do not warrant it. By the early morning post came a letter from a country town to Alfred Jones, Esq. It contained these touching words—“Reg. on the Prosecution of Bowles *versus* Brown, Jones, Robinson and Smith. Please accept retainer in this case on behalf of Brown for the ensuing —shire Sessions.”

“Humph!” said Alfred, “the worst case of the bunch, I’ve no doubt.”

Yes, Alfred, as a rule the hard-working man is retained where there is most work and most money, not otherwise. But the despondent counsel pocketed his greivance and the retaining fee. It is best to take things, especially fees, as you find them.

The next scene is the conference at an hotel on the morning of the trial. Alfred had not yet received his brief, and was meditatively smoking his morning cigar when the solicitor entered, apparently full of hope, and in the best of spirits. As a rule, I have noticed that solicitors with the worst cases are in the best spirits.

“Well,” says Alfred, “what’s all this about?”

“Oh,” answers the solicitor, “a little matter, sir. I don’t think you’ll have much trouble.”

"Going to plead guilty, is he?"

"Well, we should hardly bring you down if he were going to plead guilty. I think you'll get him off. The facts are these."

"Never mind the facts. Tell me who's on the other side; that's the most important matter."

"I hardly know," says the solicitor; "they are very anxious to get a conviction, and talk of bringing some one special."

"Well, what are the facts? We may as well know something about them."

"I'll tell you in a few words. It's not a long story, and I believe it's a trumped-up case."

"By the police?"

"Yes."

"They generally trump up their cases pretty well, and upon a tolerably sure foundation of facts."

"Well, sir, our man, Brown, is a large proprietor of vehicles, which he lets out on hire to all comers."

"To all comers," says Alfred, mentally; "there's the point at once, put in the most off-hand manner;" but he says nothing audibly, only smiles. The shrewd solicitor reads his thoughts and says:—

"No, there's nothing in that, sir."

"Very well; go on."

"Well, this Brown keeps a yard——"

"And a good character, I presume?"

"Well, he has a good character, and he hasn't, if you can make that out."

"Perfectly. He has a good character, but dares not prove it."

"That's exactly how it stands. There's nothing against him; but the thing is this—if we call wit-

nesses to character, the other side may ask whether they are aware that the man has been tried before for a similar offence ? ”

“ And what might that offence be ? ”

“ Burglary, and receiving goods knowing them to have been stolen ? ”

“ Is that all ? ”

“ That’s all. But he was acquitted of the previous charge, and I’m afraid to call witnesses.”

“ I should think so,” says Alfred, in a petulant tone, and knocking off the ash of his cigar as though it were Brown’s character.

“ Very good, sir,” says the solicitor, making a note. “ I thought you would advise that.”

“ Now the facts,” says Jones.

“ The facts are simply these. On the night of the 10th March Brown lets a horse and cart to two men, who go away with it, and in the morning about six o’clock Brown goes into his yard, and under the shed there stands the cart, with a dead pig in it, two sides of beef, and a sheep, with a ticket in his inside.”

“ Sheep was dead, I suppose ? ”

“ Oh, yes ; he was dressed, and the ticket was stuck into his kidneys. Well, seeing this, and not knowing where it came from, Brown thought it had better be sold, so he goes down to the market and offers the whole lot for sale at 6d. a-pound.”

“ What was the market price ? ”

“ Well, I believe the market was rather full that morning, and meat was a little down.”

“ What was it the day before ? ”

“ Well, I believe the day before it was a little up ; eightpence halfpenny to ninepence.”



“And the day after?”

“About the same as the day before.”

“Yes?” says Alfred, making a mental note.

“Well,” continues the solicitor, who was beautifully imposing on his counsel, “he was bid by the butcher 5¼d.; but Brown refused to take it. ‘No,’ said he, ‘I’m commissioned to sell it for 6d., and no less.’”

Another mental note.

“‘The fact is,’ says Brown the prisoner, ‘the meat has been taken away from the sheriff’s officer to avoid an execution.’”

“It would not have avoided an execution in the old days, for the man would certainly have been hanged. When you say it was taken away to avoid an execution——”

“I mean that an execution was expected, and——”

“Yes, yes; that’s a totally different thing. Proceed.”

“Well, it appears that this Brown asked the butcher to go and have something to drink at a public-house.”

“Just one moment,” interposes Alfred; “did Brown know this butcher?”

“Oh, yes; he had known him for years.”

Another mental note.

“Well, they didn’t have anything to drink, but Brown tells him the meat is up at his place, meaning his yard.”

“Yes?”

“But before Brown gets home it turns out that a burglary had been committed at a butcher’s some six miles off, and that this very meat was stolen; and

the ticket that was in the sheep had *got the name of the man whose house had been broken into on it.*"

"What a very extraordinary thing!" exclaims Alfred.

"Yes; but that is not all."

"I suppose not; but it's quite enough."

"It appears that the two men who hired the cart the night before were well known to Brown, although he couldn't swear that they were the men who had hired it."

"Very curious! Did he make an entry of letting the cart in any book? I suppose he keeps books?"

"Oh, yes, there's an entry, fortunately."

"But no name?"

"No name, because he didn't know the men."

Another mental note.

"What's the next thing?"

"The next thing is that two of the prisoners, Robinson and Smith, it appears, lodged in the same house; and in Smith's room was found *another sheep* that had been stolen from the same man. That being so, it would have looked suspicious against them, only they don't appear to know anything about it. It appears that an old woman lives in this house, and is acquainted with this Robinson; in fact, is his mother-in-law, and while she was sitting up, with her back to the door, waiting for Robinson to come home, for it was getting pretty late, somebody, it appears—she can't say who—comes in without her seeing him, and drops the sheep in the middle of the floor!"

"Bless my soul!" exclaims Alfred. "Didn't she see who it was?"

"No; it appears she didn't turn round. That's all a mystery."

"Not usual, is it, in these parts for people to go about dropping sheep in your rooms?"

"No; but you see she was alone, and a little hard of hearing."

"Did Robinson come home that night?"

"It appears he came in, and she never heard him."

"It's an extraordinary story, certainly."

"It is an extraordinary story, sir, when you come to hear the whole of it."

"Well!"

"Well," says Jackson, "the next thing is this; the man whose house had been broken into, hearing where his meat was, goes up to Brown's house, and just as he gets there up comes Brown. Bowles, the prosecutor, says 'You've got some meat here belonging to me.'"

"'It's up the yard,' says Brown, 'in a shed.'"

Another mental note.

"Bowles goes up the yard, and just as he gets there he finds Smith and a man, who Bowles swears was Robinson, and the other prisoner, Jones, harnessing the horse and putting him to."

"Who was Jones?"

"Jones was Brown's man, that's all."

"Oh, *that's* all!"

"That's all he was, sir; and I believe he's innocent as——"

"As Brown himself. Yes?"

"'Well,' says Bowles, 'that's my meat, and you don't take it away.'"

“‘Don’t we,’ says Smith. ‘We’ll show you.’ And accordingly they jumped into the cart and away they drove, Bowles running after them and hanging on to the tail-board. Now this is very important. They drove to a place where the roads diverge, and, as they were going, they beat Bowles about the head and face with a great stick, and, I understand, wounded him severely. Well, they got away, and at last it appears that the man they swear was Robinson got away too, but Smith was met by a constable driving the cart, and was taken into custody. There’s no defence for him.”

“I hope he is not going to plead guilty.”

“Why, sir?”

“They’ll make him a witness for the Crown, that’s all.”

“Oh, he won’t plead guilty.”

“What next happened?”

“What next happened is this. Up come the police and ask Brown what has become of the meat; and then Brown tells them that the owner of the meat had come, and that the three men had gone away together.”

“Which was not quite true,” said Alfred.

“Well, Brown thought they had gone away together.”

“What! when they were beating him over the head with a stick?”

“Well, Brown, couldn’t see that. He thought he was trying to get into the cart behind, as some people do at times; but the police swear that Brown pointed in the wrong direction, whereas he pointed in the right direction, with his thumb and finger,

like this. He pointed up the road they had gone, although the road, as I said, branches off when you get a little way up. The police also say that Brown told them he hadn't let the cart, but he swears he did, and produced his book to prove it."

Another mental note.

"And then I suppose they were all taken into custody?"

"Yes."

"Then it's a dead case. I never knew a more hopeless one. How can I do anything for Brown? It's impossible!"

"You've got off many a one that has been quite as impossible as this?"

"Not quite so impossible."

"I haven't quite finished the brief," says Jackson, "I want to make a few observations——"

"Please don't—You need not trouble about observations; if a counsel wants observations he isn't worth having."

This was a true remark; for nothing is more irritating than to wade through a series of observations that are pertinent; except, perhaps, the task of wading through a series that are not pertinent. If they are pertinent, they must necessarily occur to the most ordinary mind; if not pertinent, they are worse than useless, for they tend to confuse.

Now the first thought that occurs to the young advocate on reading these facts, is, that no art could obtain an acquittal. This was the view of the learned Jones, but he made this remark:—"One never knows what may happen." The witnesses may waver in their evidence; they may forget some-

thing important ; may try to make something that is important look more important still, or may add to their evidence. This should be carefully watched for. They may contradict themselves. The prosecution may be too eager, and overshoot their mark. They may be slovenly, and omit some important particle of evidence. They may call witnesses not on the depositions, whose evidence has not therefore been previously sifted, or rather *shaken together by an unskilful cross-examination before the magistrate*. Look well for this ; and if a witness comes up who has not been cross-examined, he will be altogether unprepared for your questions, and probably play into your hands, if you know how to examine him. In this case, it will be abundantly manifest that to call a witness without previous knowledge of all he is about to say, or may be made to say in cross-examination, is one of the most dangerous errors an advocate can commit, and may lead not only to a gross perversion of justice, but to some unpleasant observations upon the party who calls him.

The case looks desperate enough for the defending counsel ; but to one with a moderately clear insight into human nature it is not hopeless. Mr. Alfred Jones had something of this insight, as was manifest when he took his seat at the Bar, and glanced at the jury. He had a notion that juries, if they do not get packed, require at times *a good deal of unpacking*. And, without desiring to cast the faintest glimmer of a reflection on the officials of our Courts, who do their work in the most impartial manner, I would just observe that whenever there is an important case to be tried, it's just as well to look every jury-

man in the face, and see if you can discover a prejudice either against the prisoner, his trade or calling. You will ascertain also whether there is any appearance of partiality for the prosecutor.

I know that a good many readers will wonder how you can tell this before the prosecutor puts in an appearance. My dear sir, do look at that foreman; can you not see a gleam of triumph in his face? He knows what case he is going to try. He has read all about it in the newspapers. He has condemned the man before ever the case is opened. Have him out of the box. I saw Jones look, and he challenged him without a moment's hesitation. What a stir there was! How the other jurymen stared with amazement! How they wondered! The next man had a piece of blue ribbon in his coat. Now, I very much admire the principles of blue ribbonism, no matter of what nature soever; but it sometimes bespeaks an excess of rigid virtue, not at all conducive to the interests of justice. The prisoner at the Bar is a man who drinks, and even though only an occasional glass, he will be set down in the opinion of some teetotallers (I don't say all) as capable of committing any of that terrible catalogue of crimes which one has been taught to believe was the fearful failing of the man who "has no music in his soul." The blue-ribbon man must come out of the box in this case, and accordingly is challenged. So much virtue is not sufficiently impartial for the administration of justice.

The jury again look wonderingly at one another. Whose turn will come next? Two jurors are duly sworn, and then another challenge is given. A man

with a very rigid face and long straight hair he is ; looks as if a trial were merely a matter of form, and not an enquiry. His mouth could never smile, it is so extremely tight ; and he has, as you perceive, an eager desire to grasp the Testament and be sworn. Just as he takes the book—

“Challenge!” says Jones, and the severe man looks like a tiger disappointed of his prey. Chagrined and crest-fallen, he leaves the jury-box. The next is a smiling man ; a ruddy farmer, who means to protect property against all comers. His smile informs you that he can see through a brick wall, which means any learned counsel, and find a “werdick in spite o’ these ’ere counsellors, whose gift o’ the gab aint to take in sich as he.” He’ll not see through *this* brick wall, with all his keenness of vision, and doesn’t understand why he’s challenged, any more than the tight-faced man, or the triumphant-faced man. The blue-ribbon man has an inkling as to why he was challenged, but puts it on a teetotally wrong ground. He thinks it was the blue-ribbon. So it was ; but only as indicating an excess of virtue not commensurate with the human understanding.

Three more were sworn, and then came a momentary difficulty in the mind of the counsel. What was the meaning of those pleading eyes ? They said, as plainly as eyes can speak, “Surely, Mr. Jones, you are not going to turn I out ; I swear on my bible oath, I will do justice to the best of my ability.” And as his ability, judging from the view, seemed considerable, he was allowed to remain. But what about the next, a sullen-looking man, who never



raised his eyes, but seemed waiting for condemnation. You artful one, James Rodger, you want to slip by the scrutinizing glance of the prisoner's counsel. Your face blushes with conscious determination that no prisoner shall escape, if your "So help me God" can help it; so you *shall not* "well and truly try," nor shall you try this case at all, for you are challenged. Out upon thee!

The rest are sworn, and the prisoners given in charge.

The case is opened clearly and well: dry damning facts, without argument, as becomes counsel for the prosecution, are laid before the jury. All that mortal man can do for the defence in such a case is to watch, to elicit some little point, if possible, in cross-examination, "to go to the jury upon;" and to take up such points as there are in the prisoner's favour. And this is how it was done.

First witness proves the breaking in and stealing.

Time not certain, hence it was triable at Quarter Sessions. If it had taken place at a minute before nine it is triable at Sessions, if a minute after it must be at the Assizes. I mention this to point out the legal niceties and pettifogging wisdom of our mode of legal procedure.

No cross-examination.

Why? asks the reader.

My answer is, why? If the reader can think of a reason beyond that of getting out something which may damage the prisoners, I should be glad if he will write to my publishers. If he cannot he has his answer to the question.

The cross-examination, indeed, was the shortest

that could be administered, and was simply for the purpose of establishing the following points, and impressing them on the minds of the jury.

First—That the ticket in the sheep contained the name and address of the owner.

Second—That the butcher in the market to whom Brown offered the meat was *well known to him* and was a respectable man.

Third—That the said respectable butcher had often had dealings with Brown in his capacity of letting out vehicles.

No question of character, you see, but indirect suggestions leading to inferences. The prisoner knew a respectable tradesman who was probably known to some of the jury: a kind of reflected moon-shine character, no doubt, and very faint; something like the dark orb in the arc of the new moon, but still visible. I might say a twilight character, indicative of a rising splendour which never appeared.

Fourth—It was in consequence of Brown's going to this respectable tradesman that the police discovered where the stolen property had been deposited.

The question eliciting this fact, I observed, was put to the detective in the following words:—

“It was from information communicated to you by the respectable butcher, and which had been given by Brown, that you discovered where the meat was?”

“That is quite right, sir,” says the very civil detective, and he was not troubled with any further questions.

It *looked*, therefore, as if there had been no concealment, at all events, on the part of Brown, *always a good point to make in a charge of receiving.*

There was, as before stated, no defence for Smith, but Jones and Robinson were admirably defended by another learned counsel, whose assistance to Alfred was by no means unimportant. He knew that Brown's defence would be endangered by any unskilful question, and *that his own clients could not possibly be benefited by it.* So he put no unskilful question, but played his cards as though he not only knew his partner's hand but his play too.

I do not pause to summarize the case, or to enquire how it would have been presented to the jury if the evidence had stopped at this point, and for this reason, that from some strange cause or other, after all the witnesses who had abundantly proved the case before the magistrates had been heard, the prosecution thought it advisable to call further evidence, which was as follows :—

A detective sergeant swore that he was present when Brown was apprehended. That he was apprehended by a German detective named *Von Büster*. That he heard this Von Buster say, “Ha! ha! Chemmy (meaning Jemmy), we are cooart you at larst—I sed we shood!” To which the prisoner replied “Well Mr. Buster, *its all for money ; you know its a paying game !*”

Now this, if true, was an awkward circumstance, and, coupled with the other awkward circumstances of the case, would be about as complete a coil as ever spider wove around the body of a struggling fly.

But let the student mark for his amusement, not for his instruction, the manner in which the counsel deals with this ; because, if this evidence should break down Brown undoubtedly will be acquitted.

The reason is obvious, but had better be stated. The prosecution show that they are doubtful of the strength of their chain, although every link of it was strong enough to hold the prisoner. Not being quite certain of their handiwork they supplement it with *doubtful evidence*, and attaching *that* to the chain in a clumsy and unscientific manner, if by any chance it gives way the prisoner necessarily escapes. Let us see how it holds.

Asks the counsel: "Were you before the magistrate?"

"No," says the detective with sweet detective innocence.

"I suppose you think this evidence important?"

"Oh yes, sir, certainly."

"Was Von Büster before the magistrate?"

"He were not, sir."

"Is he here?"

"No sir."

"What brought you here?"

"A speener."

This was detective wit, but it was not clever, inasmuch as the police do not generally attend in prosecutions on subpœnas. If their evidence is material, it is their duty to give it without subpœna or extra pay. So the witty answer was in favour of the prisoner's acquittal. Wit sometimes is more than amusing, it may be useful.

"Did you make a note of the conversation which you heard?"

"No sir."

"Why not?"

"I don't know."

"You thought it important?"

"Yes."

"Did you not think it so important that it amounted to a confession of guilt?"

"I did."

The counsel does not apparently wish to *argue the matter* with the constable, because, having obtained all he wants as *facts*, he wants no policeman's *reasons* for the mere purpose of weakening them. But there are still one or two things he would like to throw some light on, so that the jury might view this evidence from his point of view and not from the policeman's. How came the detective to give evidence at all? That is the important point, and the counsel knows it to be a safe one, after the witty answer about the subpoena, so he asks:—

"When did you first make this statement to anyone?"

Most awkward, because it is clear he never gave it to the inspector on duty, otherwise he would have had to give it before the magistrates. Clear, he never gave it to the solicitor for the prosecution, for the counsel opened as much. Then *when did he first make the statement?*

"It was as this," says the detective: "I were in the 'all here in another case yesterday and meets the clerk to the solicitor for the prosecution, and he asked me if I knowed this 'ere Brown, and then I up and told him the same as I've told you."

One more question. "Did Von Büster know that you had heard this confession?"

"He did, sir."

, "You may stand down."

There is nothing to be done by re-examining this witness, because he is in so many pieces that he is like Humpty-Dumpty after the catastrophe. So he stands down. It is not attempted to set him up again.

It is clear that Brown's counsel will commence his speech with this detective and the absent Von Buster, because, in breaking down this man's evidence, he will show the weakness of the other parts of the case. So he gives the jury to understand that, although Von Buster's mode of proceeding with a prisoner might do for *Germany* or *France*, it was not quite in accordance with an Englishman's notion of fair play, to which proposition the patriotic jury assented in the most unequivocal manner. They clearly entertained strong prejudices against so un-English a mode of procedure. And, when it was pointed out to them, the fact was as plain as a hayrick, that if Brown had confessed his guilt to Von Buster, nothing would have prevented Von Buster from giving it in evidence before the magistrate. How could this look otherwise than suspicious against the prosecution?

Why was not Von Buster or the sergeant before the magistrate? And why was not Von Buster *here*? Why was no report of such a remarkable circumstance made? And why was there not so much as a memorandum of it in the detective's pocket-book? All the other evidence was weak compared to this, and weak it must have appeared to the prosecution, to have been obliged to supplement it at the last moment.

Well might the jury shake their patriotic heads in token of disapproval of this foreign mode of proceed-

feeding. It looked to them like a concocted story altogether.

So Von Buster and the detective are well belaboured with good sound invective and honest indignation, until the jury's indignation is fairly excited and in flames against the prosecution. This makes a good clear opening for the arguments that must be used to break down the rest of the evidence if that can be accomplished. Now come the improbabilities. First, the improbability that Brown knew the meat had been stolen; for, was there not the *ticket on the sheep with the name of the owner on it*? That would surely have been destroyed if the man had had any guilty knowledge. Next, it was unlikely that Brown, if he had known the meat had been stolen, would go to the open market to sell it, and to a respectable man to whom he was well known. So far as the price was concerned, it was disposed of by the fact that the sale was forced. It had to be sold because, as he supposed, it had been taken away to avoid being pounced upon by the sheriff's officer.

The next point was that, although the respectable butcher had offered to take it at a farthing under the price at which it was offered, *Brown would not let it go*, but declared he was not to take less than six-pence a-pound; whereas, if he had known it had been stolen he would have been glad to take anything in order to get rid of it as soon as possible and avoid discovery.

That was a good telling point; it went straight to the jury, and seemed to hit the foreman on the nose, for he rubbed it with his forefinger and stared with intelligent wonder. It never struck him so before.

Then he looked round at his fellow jurymen and passed the blow on.

Next came the point that, in reality, it was Brown who had given *such* information as actually led to the discovery of the meat. I say "such," advisedly, leaving the jury to take it for what it was worth—they would put their own price upon it.

Another point, not immaterial, was that Brown *had actually produced the book in which was a note of the letting out of the trap to the two men who committed the robbery.* It is true there were no names entered, but as the learned counsel could not help that, he did not refer to it. The speech was concluded with a good vigorous attack on the mode in which the prosecution had endeavoured, at the last moment, to bolster up their case; and, with a scathing eulogy on the continental artfulness and cunning of the absent Von Buster, the counsel resumed his seat.

Then, with adroit and well-considered arguments, the learned counsel for Jones followed. Wherever Brown's counsel had delivered a blow, Jones gave a well-directed kick and sent Von Buster and his sergeant colleague reeling. He was a vigorous and courageous ally, and no doubt Brown's acquittal was due as much to his timely support as to his own counsel's skill. He was Blucher at Waterloo.

Brown declared he left the Court without a stain on his character, which was true. Suspicion on suspicion, I believe, is false heraldry.



AN ACTION AGAINST A RAILWAY COMPANY, SHOWING  
HOW NECESSARY IT IS IN ADVOCACY SOMETIMES  
TO APPLY THE BREAK.

AN important class of cases at Nisi Prius is the action against railway, tramway and omnibus companies for injuries caused by negligence. In general, at starting, every presumption is against the company and in favour of the plaintiff. The sympathy of the jury is on the side of the injured; negligence is almost assumed, and the making compensation appears to be a matter of simple justice and calculation. Apart from any negligence at all, companies are looked upon as a kind of public exchequer, into which juries may thrust their hands and take out whatever they can lay hold of for the benefit of any claimant who can lay anything like a foundation for his demands: the foundation often being the injury, apart from any negligence whatever, and as often the negligence apart from any proof that it occasioned the injury. As a rule, companies well understand their position, and know that the chances, if not the facts, are against them. The best evidence they can adduce is generally the testimony of interested persons, and more often than not, of those persons who have the most direct interest in shielding themselves from blame. The principal aim which companies have in resisting claims of this kind is a mitigation

of damages, and with this main object in view the majority of defences are conducted. The advocate, therefore, who is most skilled in cutting down damages is the best suited to the purposes of the company. He is a destructive agent rather than a builder up of unsubstantial theories. But let it not therefore, be supposed that a real defence upon the merits is of little moment. It is of the very highest importance, and as it is generally looked upon with considerable suspicion and prejudice, is one of the most difficult to conduct.

I might give many examples from *sensation cases* which would be more interesting than the common-place one I am about to present, but I doubt if any-one of them would so thoroughly answer my purpose. We do not want dazzling coruscations or models of perfection. Startling surprises are not the object of these illustrations. The simpler the facts and the more common-place the line taken the more telling the incidents are likely to be.

Two years before the present trial, the plaintiff, a working man, was travelling by the railway from Wapping to Whitechapel. His case was simply this, that, before he had time to alight, the train started and jolted him off the step of the carriage on to the platform and injured his knee, for which injury he brought his action in the following year. The result of the trial was no result at all. The jury could not make up their minds as to whether the Company was liable or not. Undecided as to whether negligence on the part of the Company or negligence on the part of the plaintiff, or both; but, if both, as to whether the Company could still have avoided the accident by

exercise of reasonable care. The twelve special heads in mystified chaos accordingly. Some months after the case was tried again with the same result, namely, twelve special heads in mystified chaos.

To illuminate this utter darkness twelve more special heads were brought together in the jury-box at the Royal Courts of Justice, and the cause was once more tried. As I never flatter mortal man I do not wish to be supposed to say anything of a complimentary nature to the learned judge; but, in sober truth, I affirm that the manner in which his lordship kept the points of this case clearly to the front throughout the long and conflicting series of witnesses speaks well for the clearness and inflexible justice with which the trial was conducted.

I wish to impress on the reader that in the opening several microscopical points were made, which turned out to be no points, even under the strongest forensic lens. It was through no fault of the learned counsel, but in consequence of the inadvertence of those who instructed his solicitors, that these imaginary points were beyond human vision.

First of all, it was said the trains were "*always an hour late.*" If this had been true, it would no more have accounted for the accident than it would for the motions of the heavenly bodies. If it was untrue, it threw discredit on the *alleged* cause of it, and so was in favour of the defendants. A false point always counts one for the other side. It was shown to be *untrue*. Having subsequently been corrected by the opposing counsel, it was opened that the train was *forty minutes late*. This point, therefore, twenty minutes smaller than the other.

Secondly—It was opened that the train made *u* *three minutes* between Whitechapel and Liverpool Street. This also turned out to be a false point, c no point, for two reasons. First, the train onl travelled *a mile and a-quarter in five minutes*, n a pace to indicate any extra speed or eagernes to make up time; and, secondly, a margi of something like four minutes was allowed i timing the arrivals of trains in consequence of thei being obliged at times to wait outside the terminu before they could enter. But there being no obstacl on this occasion to the train running in instead c waiting outside, the three minutes were accounte for, *not made up by accelerated speed*, but by no being delayed outside the station. Thus two fals points were made and disposed of, and the proba bility to which they gave a possible existence wa crushed before it had a breath of life. Thirdl —the plaintiff would swear, said his counse that he went to work seventeen weeks afte the accident, but for eight weeks could only ear twenty-two shillings a week instead of thirty five. A false point truly, because the man ha sworn on the two previous trials that when h went to work, after the seventeen weeks, *he wa as well as ever, and earned the same money as before*. This went very directly and forcibly to the man' credit in cross-examination, and no doubt flashe one gleam into the utter darkness. I will now tak the points of the material evidence in chief, an alongside of them show the cross-examination leaving the reader to judge of their value.

The plaintiff ceased work about half-past three

and waited for a man who left his work between four and five. He lived near Shoreditch Station. He was to meet his wife at Whitechapel, and go shopping with her. He then described the accident, as opened by his counsel in accordance with his instructions. His cross-examination showed :

First—That he had been drinking that afternoon with some companions, and that, although he himself remained as sober as a judge, one of his companions got drunk as a lord, *but did not leave him*. From this fact, perhaps, the twelve special heads can gather that the contradictory evidence of the witnesses who will be called for the defendants, and who had not been drunk, will be at least as trustworthy as to clearness of observation of what took place on that night as that of the plaintiff and his drunken witness.

Secondly—the plaintiff, who was to meet his wife, at Whitechapel, took his ticket at increased cost of fare for Shoreditch, the station beyond. This showed either reckless waste of pence, or that he forgot he was to alight at Whitechapel to meet his wife ; or that the story of the appointment to meet his wife was a concocted one, invented to account for his alighting from Whitechapel when he ought to have quietly remained in the carriage.

Thirdly—his wife did not go to Whitechapel to keep her appointment.

Fourthly—His object, as he stated, in meeting his wife at Whitechapel, was to buy meat and carry it to Shoreditch, whereas he could buy it close at home for the same price and of the same quality. So there was no accounting for his getting out at Whitechapel at all, and the theory of the appointment with his

wife was absurd when neither the time nor the place of meeting was agreed upon, and neither went to keep the appointment. The story had nothing to do with the cause of the accident or the merits of the plaintiff's case. But *why was a useless story told?* It was told to account for a fact which the plaintiff did not know how to account for in any other way; and you may always rely upon it that when a plaintiff or defendant gives a *false reason for any line of conduct, he is afraid of the true reason damaging his case.* In this instance, it could only damage his case by indicating recklessness of conduct in alighting, which recklessness would seem to be the cause of the accident.

Fifthly—The plaintiff did not enquire for his wife at Whitechapel, but forgot all about her. He admitted also that he might have been under the influence of drink on the night of the accident. Before he answered the question which was put to him at the solicitor's office as to whether he was sober, he went to *the hospital, saw the nurse who had attended him on the night of the accident and asked her if he was sober,* to which she replied that he was under the influence of drink.

Then asked the learned judge—

“Why did you not give that answer before?”

“I did, my lord,” said the plaintiff.

“No,” answered his lordship; “you wanted to attribute your condition to excitement, when it was not excitement.”

False points, therefore, made by counsel; false testimony given by plaintiff, and false reasons adduced for conduct which required no reasons to be

given at all. A true story is generally simple enough; a false one gives the lie to surrounding circumstances, and has to be accounted for by false reasoning and imaginary causes, and usually gets blocked by real facts which it cannot displace. Then this false story is so awkward when it has to be supported by more than one witness. The companion who was drunk swore he wasn't, and yet he was admitted to be drunk by the counsel for the plaintiff. Another witness also declared he was not drunk. Plaintiff himself *swore he was*. Again, the plaintiff said there was *not time to get out, that the train started as soon as it stopped*, and yet that two persons had alighted from the same compartment, *as well as an old woman, who took a long time to get out, before he attempted to do so*.

Another important circumstance was, that he had previously sworn he took his ticket for Whitechapel (this was to fit in with the theory of meeting his wife), and now he had to swear he took it to Shore-ditch. Here there was a fact capable of proof attempted to be displaced in order to fit in an imaginary fact. How, then, does the matter stand after cross-examination, according to the learned counsel for the defendant Company?

Train not an hour late, as opened; time not made up in consequence of being late; no time made up at all; train not travelling at more reckless speed than twelve miles an hour. There was time for persons to get out. Plaintiff had not to meet his wife at Whitechapel, or he would not have booked to a more distant station. Neither time nor place mentioned where he was to meet her. He did not

inquire for her at Whitechapel. She did not go to Whitechapel. (Upon this point I may also state the wife gave false and absurd reasons for not going.) He had been drinking. His companion was drunk.

He had given false statements as to his earnings, and as to the time of his being incapacitated to do work full time.

But, notwithstanding all this, *how* did the accident happen? He might have been drunk, but still the Company had no right to injure him. He might be a false witness, but yet he had met with an accident, and if it arose from the Company's negligence he was entitled to compensation.

In a defence of this kind you have not to show how the accident happened. That is for the plaintiff. You have only to prove there was no negligence on the part of the Company. If you can show negligence in the plaintiff, well; and in suggesting this negligence as the probable cause of the accident, all the points made were good, because they gave rise to probabilities; nevertheless these, although good, were not conclusive. There was the fact of the accident, and the *probable cause of it given by the plaintiff*, who, although untrustworthy in many particulars, was not utterly unbelievable as to this. Suggestions, therefore, on the part of the Company will not wipe out this direct evidence; but a good suggestion as to the probable cause of the accident was made, *based upon an answer to a question in cross-examination*. The plaintiff stated that he knew some trains did not proceed further than Whitechapel, and the suggestion was that he hurriedly jumped



out for the purpose of catching another train, and, in so doing, fell.

I do not think there were any facts up to that time on which the suggestion could be based, beyond the plaintiff's knowledge that passengers sometimes have to change; the suggestion, therefore, was not evidence, and did not induce the jury to stop the case, so witnesses were called, who proved that the plaintiff and his companions were not sober in their language and conduct while in the carriage; and that, after the accident, the plaintiff had stated that he thought they had to change carriages. I need not say there was abundant evidence to prove a total absence of negligence on the part of the defendants; but it took a great many witnesses and a long time to do it, and it took the jury a couple of hours to consider their verdict. At last, however, the thrice-told tale was brought to a conclusion by a finding in favour of the defendant Company.

Juries, truly, are an incomprehensible body. I do not think the direct evidence on the part of the Company would have been sufficient to lead them to the conclusion they arrived at, because it simply went to show that the train stopped long enough to allow passengers to alight; that the doors were shut properly, and that the guards did their duty. All this would have looked like mere evidence of course, on the part of the Company, and was, as usual, of such a character that, if accurate, there could have been no accident at all. When a man has lost a leg or an arm it is useless to attempt to prove that it was the result of a miracle. Miracles are so rare now-a-days that they are never believed in a Court of

Justice. Over-swearing is worse than not swearing up to the mark. What you have to look for in the plaintiff's case are false points, false arguments, absurd reasons for reasonable conduct, exaggerations, perversions of simple facts, unnatural theories, improbable motives and contradictions. All these were found in abundance in this case, and the wonder was that the jury should have taken any time to consider their verdict. It only proves how difficult it is for the most experienced counsel to overcome the prejudice and benevolence that at times find their way into the jury-box.

## ACTION AGAINST A TRAMWAY COMPANY.

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AN ARRANGEMENT IN BLACK AND WHITE.

My next illustration is an action against a Tramway Company for damages in consequence of the defendants' negligence. It differs greatly in the mode in which the defendants conducted their case from the last, although the circumstances attending the accident were similar, and the alleged negligence precisely of the same character.

The reader will smile when I say that in conducting a defence much will depend upon the line you take.

"Of course it will," he exclaims contemptuously; but I want to point out, my dear and impetuous friend, how the true and the false lines run so nearly parallel that it requires careful study *and* knowledge of human nature to distinguish them. I am dealing in these cases for the most part with *leaders*, not with inexperienced juniors; and, if leaders with all their practice, fail sometimes to discern the left hand from the right, it shows how carefully advocacy should be studied, and how useful models may become, whether they are models of beauty or deformity. Have patience with me, therefore, when I say that much depends upon the line you take.

In the present case a middle-aged lady, whose husband was a builder, and carried on his business at Scarborough, was on a visit in London. Going out one morning to "do a little shopping" she hailed a tramcar, which was just in the act of starting. The conductor stopped the car, and the lady a portly person, was just in the act of getting on to the platform when on it started, and as the lady had one foot on the step and the other on the ground, her footing was somewhat unstable, and down she went on her back with considerable violence. She was picked up and taken to a doctor's where she fainted, was taken to her lodgings, and remained there several weeks under medical treatment. She then returned to her home, and, after some time, becoming worse, called in a local doctor. That gentleman at once perceived that a rib was fractured, and immediately reported the fact to the manager of the Tram Company, who some time after communicated the report to their medical adviser. That gentleman however, pooh-pooed the idea of a broken rib without further examination, although the local doctor's letter had stated that if the Company's doctor would come down he could not only ascertain from the ordinary examination that the rib was fractured, but could distinctly hear that it was broken when the patient breathed. But the Tram Company's doctor, satisfied with his previous examination, was prepared without further enquiry, to swear that if a rib had been broken *he must have discovered it*. One or two other doctors would also give evidence that it was *impossible for a rib to be broken, and not discovered on examination*. The reader will bear this in mind, for

it will become important on the motion for a new trial.

One further statement there was in the local medical gentleman's letter to this effect, that "he reported the fact of the broken rib to the Company *in order that they might send someone at once, so that it could not be alleged hereafter that it was a hole and corner examination.*"

What a straw this was for counsel to catch at will be seen in the course of the trial. That counsel should clutch at it I am not surprised, because a straw sometimes in a Court of Justice, if adroitly exhibited, will look as substantial as a floating spar; but how any human being could believe it to be a lifeboat passes the comprehension of my unimaginative mind.

The question in the case was simple enough—*Did the car start before the plaintiff had time to enter?*

The cross-examination of the plaintiff and her witnesses will be amusing. It was clever but unscrupulous; ingenious but unmerciful. It was clearly not based on any profound knowledge of human nature, for the human nature in the jury-box resisted and resented it.

"Did you not once keep a greengrocer's shop?" the plaintiff is asked.

The question certainly seems a long way from the issue; but, I suppose, being admissible, it went to show that a greengrocer's rib is not quite so valuable as the rib of a builder's wife. It means something you may be sure.

The answer was "Never."

The foundation on which this question was based

was this : There had at one time been a front-room occupied as a greengrocer's shop on the premises where the plaintiff resided. But even if the plaintiff did keep a greengrocer's shop, it had little to do with the question as to whether there had been negligence on the part of the Company in starting the car before the plaintiff, greengrocer or no greengrocer, had time to get in it. Nor do I perceive how keeping a greengrocer's shop went to the credit of the witness.

The next question was whether her husband *had mortgaged his houses ?*

Answer : " I don't know."

" But you keep the books ? "

" I keep the books."

" And your husband has claimed damages for the loss of your services in keeping the books ? "

" I don't know."

" What *do* you do ? "

" I let his houses and keep his rent-books."

" Has he got any houses ? "

" Yes."

" Has he not applied for donations to a friendly society because he was hard up ? "

" I don't know."

" Will you swear that ? "

" Will I swear what ? "

Counsel hardly knew how to answer—he was being cross-examined now.

So, not making anything of the greengrocer's shop, and nothing of the mortgages, the learned counsel " tackled " her upon the accident, and strove to make out that she ran a considerable distance

after the car, and endeavoured to enter it while in motion ; a futile endeavour, certainly, seeing that this middle-aged lady had hailed the car while she was *about a hundred yards behind*, and would have had to travel at the rate of about twenty miles an hour for an hour and-a-quarter before ever she could overtake it. This was a glaring improbability set up by the defendant Company.

The jury wagged their heads and smiled.

No doubt it is possible in a circus for a clever equestrian to vault on to the back of a horse while the animal is going at full speed ; but it is different in the case of a tramcar, and a lady cannot vault into it while it is going at a velocity of eight or nine miles an hour, especially if she is a couple of hundred yards behind, and only progressing at the rate of two miles an hour.

So the cross-examination, admirable as it was, *failed*. And let this be remembered by aspiring students ; when you fail in cross-examination you are in a worse condition than you were before you began. There was a similar cross - examination administered to the other witnesses, every question irrelevant to the issue, but going directly to *the credit* of the witnesses.

Next came the important witness in the case with regard to the injuries, namely, the local medical man. In private life you would scarcely venture to express a doubt as to the veracity of a gentleman, and you might innocently imagine that even upon his oath there would be some recognition of his desire to tell the truth—at all events, some respect for his professional reputation.

The doctor gives his evidence fairly enough ; states how he was called in, examined the woman, and discovered the broken rib, evidenced by *crepidus* ; how that he immediately wrote the report ; that he continued to attend the patient, for which attendance he had charged a moderate sum, not enough one would have thought to bribe him to commit wilful perjury, and so run the risk of penal servitude.

One would also have thought that if the Company had doubted this gentleman's word when he sent the report, they would have taken some means to test its truth. They could easily have sent down their medical officer to ascertain whether there was a broken rib and *crepidus* or not ; and if there had not been, the resident medical gentleman would have been nicely caught. But they preferred to meet his statement by mud, a bad argument at all times, unless you are lodging a complaint against the vestry as to the state of the roads.

Now let me ask the student to consider what there was to cross-examine this witness about *in the absence of any evidence to contradict his statement*. There was really nothing, except as to the nature of the inquiries with a view to minimise the damages. A judicious question or two as to the nature of the injury, and the mode of treatment to which the lady had previously been subjected by *the first doctor she had called in*, was all that true advocacy could have warranted. Instead of this, the Company instructed their counsel to ask these questions :—

“Will you swear the rib was broken?” .As if



the doctor, having sworn that it was, would now swear to the contrary because the learned counsel invited him to do so. It is so like asking a witness, "Will you swear you have not committed perjury in your last answer?"—with a view to prosecute him either for the first statement or the second. This is an almost exploded style of cross-examination. I do not say that an extremely effective question, similar to this, may not sometimes be put, but *it can never be asked to contradict a hard fact which a witness has made up his mind to swear to.* Try as you may, you cannot get him to put his foot upon his own neck. The question may be usefully asked when a witness has given a *careless* answer or an *inconsidered* answer, damaging to the cross-examining counsel, and the witness is reminded by the form of the question that he is on his oath. This goes to the *certainty* of the witness, and not to his credit. You may rely upon it that when a witness speaks from knowledge and with certainty, no amount of "Will you swear that, sir," will induce him to contradict his former answer.

I come now to the next question which the learned counsel was instructed to ask of this medical gentleman, and it was this :—

"*You have been in trouble, haven't you ?*"

"In trouble !" exclaims the astonished witness.

"Yes, in trouble. You know what I mean ?"

"Indeed, I don't," says the witness.

"Oh, oh, do you swear that ? weren't you charged with assaulting a girl ?"

The witness' hands fall upon the ledge of the witness-box ; every eye is fixed upon him ; he turns

pale and red, and a strong emotion absolutely shakes his frame as he answers :

“ I was ; most unjustly.”

“ Oh, of course,” says the counsel resuming his seat.

Not long, however, was the learned gentleman's triumph ; a question in re-examination elicits the fact that, ten years ago, a girl, for the purpose of obtaining money, had made a false charge, which had been thoroughly investigated and disproved ; that public sympathy had been on the side of the accused ; that he had retained, ever since, his position, appointments, and practice, and was respected by all who had the best means of knowing his character.

Let me ask for what reason was this question put ? It had nothing to do with the merits of the case ; the Company had never met his evidence, or attempted to investigate the truth of his statement made in writing months before. It could not go to the credit of the plaintiff, who had been seriously hurt, and whose injuries could not be disputed, except the fracture of the rib, and that only by attributing perjury to the doctor.

On what principle, then, was the question asked ? Was it to torture the witness ? What effect could it have on the verdict ? We will see by-and-by what its effect on the verdict was. I say nothing of its influence on the judge. Sometimes a breath of suspicion will tarnish the fairest life. A falling away from virtue is to some minds intolerable, but advocates must take human nature as it is ; and as it is, it will generally be found in the jury-box. Look well then to your jury, and turn such an onslaught as this in favour of your client ; and rely

upon it as a sure maxim in advocacy, that for every unjust attack upon private character *the jury will give damages if damages are possible.*

In this case damages *were* possible. There was really no defence to the action. Every fact and every probability were in favour of the plaintiff, and the jury gave a verdict for £150:—injury, I presume, £50, £100 for the mud.

Of course, there was the usual application for a new trial. You may sometimes worry a successful plaintiff out of a verdict when you cannot reverse it. Companies are seldom content with one trial when they lose. So the modest application for a new trial was made on the ground that the verdict was against the weight of evidence.

“I suppose the case was properly placed before the jury,” said one of their lordships.

“Oh yes, my lord,” replied the counsel for the plaintiff.

“And the witnesses cross-examined?”

“Oh yes, my lord; their whole lives laid bare with the utmost fidelity. The doctor was even asked if he had not been charged with rape—a most scathing cross-examination, my lord; the witnesses were fairly riddled.”

“You mean puzzled?” said one of their lordships.

“You mean shot through and through,” said another of their lordships.

“Yes, my lords,” answered the counsel.

“I thought so,” said both the learned judges, simultaneously.

“I am sure, my lords,” continued the learned counsel, who was “showing cause,” “the defendants

cannot complain on the score of cross-examination that everything was not done for them that was possible. The poor doctor was completely heart-broken. The false charge raked up against him was at least ten or twelve years old."

"And did that fail to obtain a verdict for the defendants?"

"Oh yes, my lord, the facts were so strong that I believe murder itself would have been useless. The defendants were bound to admit that the plaintiff had been injured, but the question was whether the doctor who subsequently attended her had been guilty of some offence years before."

"How could that affect the case?"

The learned counsel did not see how, although he and everyone else knew in what way it affected the verdict. But how could the learned counsel for the defendants urge *that* in mitigation of damages. I have, however, known even defendant's misconduct urged as a plea in that behalf. So strange an art is advocacy; so unblushing in its pretensions, so artful in its manœuvres, so sublime in its contempt for suffering.

Unhappy doctor thou hast no instrument which can give a pang like thine!

In dismissing the application for a new trial, one of the learned judges uttered the following pithy sentences, which deserve to be printed in letters of gold and placed over the door of every Court of Justice in the kingdom:—

"I have always set my face against turning the witness-box into a pillory; and I always shall set my face against it as long as I sit on the Bench. If witnesses who come to give evidence, often against

their will, are to have their whole life laid bare by cross-examination, and every unhappy failing or misfortune of their early days raked up for the purpose of throwing discredit, as it is called, upon their testimony, it is a form of torture that no one will voluntarily submit to, and the cause of justice will suffer. No one will come forward to give evidence; for no one will be safe. Few persons could stand an examination into the whole of the incidents and errors of their past lives. Witnesses should be protected in the performance of a public duty, and matters which do not directly affect their credibility should not be dragged forth to the public gaze. I repeat it, you have no right to turn the witness-box into a pillory."

So the verdict stood. It is never wise to cast your ship away when, by throwing something overboard, you may bring her into port. There is often more art in losing a case than in winning one. If your horse runs away don't throw the reins on his neck. You cannot meet a fact by theory. Not long ago an expert in handwriting declared that a certain writing was a forgery. He was asked what he would say if the man who wrote it came into the box and swore it. His answer was he would not believe him. Asked, if witnesses came who saw him write it, what he would say, he answered, "If a hundred persons swore they saw him write it I would not believe them, because *there are indications in the handwriting which clearly show that it could not have been written by the man whose writing it purported to be.* The expert was told to stand down. Experts in art have given similar evidence.

Counsel should always be on their guard against experts, the most dangerous class of witnesses you can meet. They do not swear to facts, but to *opinions*, and their opinions are to them what facts are to ordinary men.

In this case the argument that a rib cannot be broken without the fact being discovered by a medical man was singularly unfortunate, since the tribunal could contradict it *from its own experience*.

## ACTION AGAINST PROMOTERS OF A COMPANY.

### A STAR OF THE FIRST MAGNITUDE.

It has been suggested during the progress of this book, that it might be useful to give instances of advocacy from the State trials. I cannot, however, perceive that any good would result from it. State trials are not necessarily great trials, any more than great lawyers are always great advocates. Neither is it to exceptional advocacy that I desire to direct the reader's attention. Everyone has not to defend a royal personage or a covey of bishops, and I would much rather show, if possible, how to defend a common action or a common thief.

Besides, it is easy enough to be heroic when the great occasion comes ; the difficulty is to be commonplace. Everybody likes to do some great thing ; the "waters of Israel," however, are good enough for me. The real test of capacity is in the performance of the minor and unapplauded duties of life. It is the everyday work of the profession that I am illustrating. The great feats of advocacy illustrate themselves, and after all are not different in kind, but only in prominence and splendour from the simplest work. Big cases are no bigger than little ones. Let

the cause or the charge be what it may, you must follow on the same lines and employ the same art. The point of sight is the same in a small picture as in a large one, and the rules of perspective must be obeyed in the one as in the other. You would defend a master and his slave, a prince and a beggar, by the same rules. Treason is not dignified because a nobleman is charged with it, nor advocacy consecrated because a bishop is the subject of it. So that State trials are no better as illustrations than sessions trials. What I chiefly want to find are *blunders*; beauties will discover themselves without being sought.

Let me take a specimen from one of the modern masters. It is a simple, common-place case enough, but requires skill in management; especially it needs a clear and well-limned design in its opening. I scarcely think it can be won if it be not well opened, and I hardly think it can be lost if the opening be clear. The speech, therefore, has art in its construction and symmetry in its proportions. Much needed here is the advocate's skill in management, for on the other side is an array of counsel by no means to be treated lightly. They are at least three to one against the plaintiff; for, as it appears, several gentlemen of position are charged with fraud. It is said they have issued a false prospectus for the purpose of inducing the public (and among them the plaintiff) to subscribe for shares in a certain commercial company. The social position of the defendants, therefore, is an important element.

Now, several things have to be established before a verdict for the plaintiff can be found, and in order



to understand the outline which I shall give of the opening speech, it is proper to state what the points are that will have to be found by the jury to entitle the plaintiff to a verdict.

*First.* It must be proved that the defendants were responsible for the contents of the prospectus.

*Second.* That the statements contained in the prospectus were false.

*Third.* That they were false to the knowledge of the defendants, or, at all events, that they were made in reckless ignorance of the facts.

*Fourth.* That the plaintiff took his shares, believing the statement to be true.

Now, simple as this case is, it is difficult; there is much to be established. The facts must be clear, and, if I mistake not, the opening speech must be clear too; it must be so arranged that there must stand out before the jury the position of the defendants, their relation to each other, their connection with the Company, the nature of the article which the Company was formed to deal in, the knowledge of the several defendants as to the contents of the prospectus, the position of the plaintiff, and the mode in which he was induced to take the shares. If all this be well done, there will appear before the jury something with a well defined outline, and they will be able to watch the details of the evidence as they fit themselves into and complete the design.

Let us listen to the advocate. He makes a good start, because he calls the attention of the jury to “human gullibility.” That’s the groundwork on which all fraudulent companies work. So it is put in the forepart of the opening, and it tells well, as you

can see by the pleasant smile that passes over the faces of the jury. Their attention is at once fixed. There will be something amusing in this "human gullibility," and a new feature of it will, in all probability, be brought to light. Human gullibility is always interesting, from the gypsy fortune-teller's vulgar imposition to the spiritualistic revelations of the other world, which captivate the enthusiastic believers in the impossible.

We have now an extremely short statement, as to who the *plaintiff* was, and are told that he brought his action against the defendants *for fraudulent misrepresentations, whereby he was induced to take shares in a company called the "Chocolate Sawdust Company."*

That's a good mode of telling in a few words what the jury have to try. So to speak, it was "the plain English of it," and that is what the jury like. It occupies the foreground in the speech, and throughout the trial will be always present to their minds. As we listen with intense interest we wonder what will come next. We have a first-rate advocate to tell us, and, therefore, had better listen. He will be sure to give some important fact the place of honour, and here it is:

*The failure of the Company* in which the plaintiff was induced to take his shares. The Company, it appears, had gone into liquidation after the plaintiff had taken his shares, and he was then required to pay calls upon a hundred one pound shares, he having only paid the money upon allotment.

You can see the bird hopping into the trap as plainly as possible if this statement be correct.

/ Next comes a description of every one of the

defendants. This was necessary in order to the complete understanding by the jury of *the persons with whom the plaintiff had to deal.*" If they are shown to be men used to the business of getting up companies, to the inner workings of the board-room, and to the intellectual business of prospectus drafting; if they are shown to be sharp, shrewd, clever men of the world, with a thorough knowledge of human gullibility, you may depend upon it this case will be more than half won by the opening. All this, therefore, was shown most clearly by the description of the defendants and their several occupations *as early as possible in the speech for the plaintiff.* The jury are making notes you see *before* a word of evidence is given. They are noting human gullibility. So far, then, all is clear and straightforward. The case is unfolding as nicely as possible, without any exaggeration of language or facts. There are already some good strong inferences and a fair amount of prejudice; the way, therefore, is prepared for the *history of the transaction*, which now in its natural order comes and unfolds itself as follows:—

In 18—, one of the defendants, Hookey, who was an engineer, took out a patent for obtaining a particular product from the seeds and fruit of a certain vegetable. Hookey in fact was a trustee for himself and the other defendants.

The next step was to sell the patent rights to a gentleman named Albert Montague Strawman, the son of one of the defendants, in consideration of one penny per pound royalty on articles of food or beverage which might be sold under the aforesaid patent, and £20,000 in cash or shares fully paid-up

in a company which was to be started by the said Albert Montague Strawman, to be called the "Chocolate Sawdust Company, Limited."

The Company was to be started with a nominal capital of £50,000 in £5 shares, and was to have the option of purchasing the royalty for £30,000.

Now let us pause a moment and survey the road we have travelled. At this point will not the jury ask themselves how it came to pass that the son of one of the defendants was to be so highly favoured? why his father was to present him with so valuable a gift? what he had done to deserve it? and why the parent should not have kept it himself? with various other questions not unimportant at this stage of the enquiry.

Next comes the story of the prospectus. Strawman being chairman of the Company, and Romney the solicitor, they drew out this important document: "And it was part of their scheme" the jury were told "that the shares should not be put into the market, but be chiefly held by these defendants." Out of 6,800 shares which were allotted, 6,400 were appropriated by the defendants. Then we are told that "flaming announcements were published in the newspapers describing the merits of this wonderful product. It was to possess seven distinct advantages over ordinary chocolate, the distinct advantages being conferred by the sawdust.

The next step was, that under the powers of this Company, as set out in the prospectus, subsidiary Companies were to be formed for the purpose of buying at extravagant prices the right to use the patent in

foreign countries. Among them was the French Chocolate Sawdust Company.

Then comes the inducement held out to the plaintiff which caused him to embark in the magnificent scheme, the inducement being contained in the prospectus, which was now read a first time.

Great success it appeared from the document had attended the Company in England, and that being so, the directors felt themselves justified in stating their confident belief that the profits would pay dividends of at least 50 per cent. on the nominal capital, and would exceed those of the English Company, which Company had entered into a contract that would yield a return by way of annual dividend of a sum equal to the whole paid-up capital of £34,000.

A truly magnificent project, proving the truth of Solomon's words that “*man findeth out the knowledge of witty inventions.*” One had need to understand the words of the wise and their dark sayings “before embarking in so unprecedented an enterprise.”

The case being thus far simply stated would appear to be almost proved, and in reality the jury think so if you can form any opinion from their countenances. It will take some getting over, that statement, because no one will believe that three intelligent business men like the defendants would really cast so much “bread upon the waters” with the hope of finding it after any number of days.

Now comes the learned counsel's bold assertion that there was no justification for this statement; and he says further, that the only means by which the English Company made any profit at all was by the sale of the patent rights to the French and other

Companies. That they obtained £50,000 by these means, and a further sum of £30,000, which was by capitalisation of the royalty. These sums the defendants it appeared put into their pockets, although the wonder is that being such public benefactors they did not put them into the pockets of other people.

But the defendants did so far take the public into their confidence as to sell their own shares, which at one time had been quoted as high as £50 premium, when only £1 per share had been paid.

Then said the learned counsel, “after *this great success the parent Company went into liquidation*; the success it had reached was due to swindling, and that the whole of the profits had found their way into the pockets of the defendants.

There is in this opening, of which I only give the form, a model for any advocate to study. Fifty counsel might have opened the case in fifty different ways, but not one would have been so effective.

*First.* The claim.

*Secondly.* The failure of the Company after the plaintiff had taken his shares.

*Thirdly.* The position of the defendants, and their character as deduced therefrom, with all the probabilities arising from their intimate knowledge of the workings of companies, and their knowledge of “human gullibility.”

*Fourthly.* The history of the undertaking, with all its paternal and filial reciprocities.

*Fifthly.* The magnificent prospectus with its probabilities, that is to say, its absurdly exaggerated advantages calculated to deceive only rapacious gullible fools.

*Sixthly.* The £80,000 in the pockets of the defendants, which was not a bad egg for a dead goose to lay.

Now, I would like to ask what powers of advocacy could overcome such a set of facts as these? Turn them, twist them as you will, there they are, and, like a glass prism, they present the same surfaces, but throw different coloured rays at every movement.

There is only one way for skilled advocacy to meet these facts, although the unskilled would doubtless find many. The one way is not to dispute the facts, but to attack the probabilities. If you have carefully followed the incidents of the case you will have seen that it is not the facts so much that the learned advocate has made his case of, but *the probabilities arising therefrom*. For instance, it might be quite possible for one defendant to sell to the son of another defendant a valuable right for a trifling sum. But what is the probability?

So, if you take the prospectus, it might be a wicked fiction from beginning to end, and yet the defendants might have been themselves imposed upon by someone more clever than themselves.

But what are the probabilities?

So that, after all, probabilities are the very strength or the weakness of facts; sometimes they will destroy the evidence of facts altogether. State a fact with an improbability, and you will be liable to disbelief. But, then, suppose a man, known to be a man of high character, states an improbable fact, what then?

I answer, *the probability is that it is true.*

But when a trustworthy witness has stated a fact,

although he has only stated it to the best of his belief, *with a probability*, it will take a great deal of swearing to get over it.

Say you prove that a house caught fire in three different rooms at the same time, although you have not a particle of evidence beyond that fact, yet the probability of its being the work of an incendiary will be so strong as to be irresistible; and though fifty witnesses were to swear to a series of facts with a view to account for the origin of the fire in opposition to that probability, it would not have the least effect even on "human gullibility."

Probabilities, therefore, are the mainstay of evidence; are, in fact, *the* evidence; and I will endeavour to show, by-and-by, how almost entirely Cicero builds his defences upon them. In the present case the advocates for the defendants knew well enough what they were about, and so they opposed evidence *to the probabilities*. The defendants swore they were not conscious of any mis-statement in the prospectus.

One learned counsel said "It has been asserted that in a contract which was entered into between my client and one of the witnesses for the plaintiff, he, the witness, had been befooled, and that my client is a swindler. "But," said he, "there is not a tittle of evidence to support such statements." This pretty well I think proves my proposition as to probabilities.

Another of the defendants' counsel said that to establish fraud against his client, who was the solicitor to the Company, it must be shown that he acted not merely as a solicitor, but as *an individual*,



and he submitted it would be very difficult for the jury to come to any such conclusion. Difficult no doubt to make a solicitor out of nothing, or to make him an abstraction; but not difficult surely to believe that what the solicitor knew the individual knew also. Even if a solicitor be two persons, you can scarcely believe that one of them can act without the other's knowledge. So that subtle reasoning fails, as fail must all attempts to separate a man from himself, or to make two men out of one. The defences failed, not because they wanted ability and ingenuity, but because *they lacked that probability which was so strong on the other side*. Men have not even yet succeeded in gathering "grapes of thorns, or figs of thistles;" horticulture has not attained that pitch of perfection at present. When it does you may probably make very good chocolate out of sawdust.

I will add, with reference to this case, that I am expressing no opinion of the character of the defendants, or the nature of their transactions. I have simply dealt with the statements and the conduct of the case from the advocate's point of view, and made such reflections as have occurred to me, not with the wish to enter into the merits of the case or to express an opinion upon it, but how from its management the jury were driven to the conclusion they arrived at. It is not the merits of the case, but those of the advocate that I am concerned in pointing out, and I have done so without the remotest intention of casting an imputation on anyone concerned in the cause. I know nothing of the parties, the cause, or the chocolate.

## AN INSURANCE CASE.

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TOO MUCH EPITHET. 2

THIS case will illustrate the fallibility of human judgment, when formed before the facts are fully known ; the difficulty which sometimes arises in advocating a righteous cause, as well as the effects of prejudice upon the progress of a case.

The action was brought by a mechanic against a Fire Insurance Company for £100, upon a policy of insurance for tools and furniture which had been destroyed by fire.

There was no policy of insurance and never had been ; so the pleader's art was manifested in alleging first that *there was a policy*, and in the alternative of there being none, then that there was *an agreement to grant a policy*. It also turned out there was no agreement even, so the pleader's art was rendered still more conspicuous. The learned counsel for the plaintiff commenced his opening speech by alleging that the Company was a miserable wretched Company, a family party who traded on the poor, and who, after taking the premiums for insuring, failed to perform their contract. And this statement, which was all untrue, caused the clever jury to see through the case at once before ever a fact in

support of a single statement was deposed to, and every juryman became a prejudiced and unscrupulous advocate for the plaintiff. They were a special jury, and wagged and shook their special heads, as every epithet and insinuation were hurled at the devoted and maligned Company. I verily believe that if they had been asked for a verdict before the counsel for the plaintiff had sat down, they would have given it. They did in fact propose to give it before the counsel for the defendant Company had been heard; and sent up to the judge what they considered a verdict for the plaintiff. His lordship, however, told them that the Company was *entitled to be heard*, or there would undoubtedly be a new trial.

The special heads therefore wagged, and learned one lesson, namely, that both sides in a cause must be heard before verdict can be returned. The facts of the case were as follow:—

An agent of the Company had asked the plaintiff to insure. Plaintiff was already insured in another office, but said *he was not*. A proposal form was shown and *read over to him*, and a printed receipt form was *read over to him*, which stated in the plainest language that the risk was *not covered until the proposal was accepted by the Company, and the policy or notice of acceptance* was sent to him. Five shillings was paid on account of deposit, *to be returned if the proposal were not accepted*. This was on the 4th February. The proposal was sent to the manager of the Company on the 8th. On the 14th of the same month two events occurred; the premises were burnt down, and the Board of Directors refused to entertain the proposal. It was *clearly established that at*

*the time they did so they had never heard of the fire. But before this was proved the learned judge observed that if the fire had not occurred on that day, could anyone doubt that the proposal would have been accepted?*

Here the special heads wagged with conscious wisdom and delightful expectation. Following my lord's leading, the whole band of fiddlers struck up with a vehemence that startled Justice from her propriety, little dreaming that the plaintiff could not by any possibility dance to such a tune, and not perceiving that *if the directors of the defendant Company had known of the fire, and had refused to accept the proposal for insurance on that ground alone, they would have had a perfect right to do so, all the fiddlers in creation to the contrary notwithstanding.* Again, had the jury been less prejudicial and less inclined to punish the Company for the untrue accusations of the learned counsel, they would have reflected that as a matter of fairness his lordship would never have made the observation if the verdict could have been based upon it. Therefore the jury began by being unjust, and ended in being foolish. They are sometimes so clever and absurd. Whenever you get such a jury as this you had better let them make themselves as ridiculous as possible, and show that they are unfit for the post they occupy—their verdict then must be abortive. After abusing the defendants the counsel undertook to prove conclusively that the receipt of the five shillings *covered all risk from that date, a great and impossible task truly, with all the documentary evidence dead to the contrary!*

A dry, hard fact needs no hammering. It resists

argument, and stares you in the face, notwithstanding the most violent protestations that it has no existence. But when a jury is determined to ignore facts, as I am glad to say they very seldom are, you may quietly ignore *them*, for facts will outlive the jury. Again, an alleged fact which wants so much "conclusive proving" is seldom conclusively proved at all. It melts away generally like a snowflake that you examine in the palm of your hand. And in this case I thought the learned counsel did protest too much. He alleged facts too big for proof; he denounced the defendants and left his denunciations as the only evidence against them; he insinuated motives without showing a possible basis on which they could rest. He *said* the five shillings was to cover all risk, and the twelve special heads nodded as though they had been present at the payment thereof, and as if witnesses could never lie. So that point was established to their satisfaction. Next, said the learned counsel, *the proposal was actually accepted by the Board*. That also was taken as proved by the jury. Next it was affirmed *that the policy was actually made out*. Here the fiddlers struck up again, as though some great good fortune had befallen them. Next, it was said the directors all heard of the fire *after the acceptance of the proposal*, and then met and destroyed the proposal. This looked something like infamous conduct, but it lacked one essential element to make it evidence, that is, *proof*. Then it was said the man would be called who received the accepted proposal from the Board *and made out the policy* upon it.

So that altogether a marvellously good case was opened. No link was missing, and nothing but the

evidence in support of it wanting. But unfortunately, the only so-called proof of all this was the oath of the plaintiff as to the statement made by the agent; a question on the proposal form asking *the agent whether he had covered the present risk or not*: the *calling* a quondam servant of the Company who had been dismissed for not handing over a premium paid to him, and another discharged servant who had been the victim of a similar accusation. But *neither of the discharged servants swore up to the mark, or up to any mark whatever*. Their evidence only went to show their own malignancy against their late employers.

The jury one after the other in rapid succession put questions to the witnesses and questions to the judge, and even addressed arguments to his lordship with a view of showing that the defendants were liable. Never was there such a battle in a Court of Justice.

The jury practised file firing and volley firing with the most untiring perseverance, evidently with the object of establishing a claim which had neither foundation in law or in fact. Why did these twelve heads wish the plaintiff to win? Not because he had a ground of action, but because the Company had been abused, the man had paid five shillings, and his things had been burnt.

In cross-examination it was shown first that all the vilification of the Company was groundless; there had never been but one resistance to a claim before this during the Company's existence; tens of thousands of policies had been granted and thousands of claims paid. In fact the Company stood

about as high as any Company could stand, and the learned counsel, who had opened with so much acrimony, had to *publicly withdraw all he had said against the Company*. This was a good effective starting point. If you once get a nice piece of high level ground to stand upon, you can command a pretty good view of the situation.

Judge sees at once it is not a "wretched, miserable Company" or a "family party," but a *bonâ fide* respectable body of gentlemen, and we hear no more of attempts to win the case by abusing them. Vituperation in fact turns out to be forensic eloquence, that is all.

Still, the jury are benevolent-hearted gentlemen, and, like a good many other persons outside the jury-box, they feel disposed to act generously by putting their hands into other people's pockets instead of their own, a principle which honest men who are not so benevolent set their faces against. Charity may cover a multitude of sins, but I never heard that dishonesty was one of them; *that*, when it obtains its deserts, is usually covered by a less attractive garment. The next point established was, that the opening speech was ever so much larger than the evidence in every particular, one of the greatest mistakes a counsel can make. The plaintiff did *not* prove, as he undertook to do, that the policy was issued, but *that it was not*, and in this he was *corroborated by the two discharged servants*. The point remaining, therefore, was, as to whether the agent had made the alleged verbal bargain, and it was upon this point that the sagacious jury made up their twelve several minds that he had.

But the judge was of opinion that even if that were so, there was still left the question as to *whether the agent had authority to make it.*

Then the jury became illumined by a ray of bright intelligence, not their own, but the judge's, and suggested that it was really altogether more a matter for the judge than for them.

To this the defendant's counsel cheerfully assented, and the plaintiff's counsel being also agreeable, the whole matter was left to be decided by the learned judge, and the jury were dismissed.

Now, let it be observed that this jury broke down through their own wrongheadedness. The very surrender of the case was only in keeping with their previous conduct. If they could have returned their verdict for the plaintiff without hearing the defendant's counsel they would have done so. It was the refusal of this generous offer that led to the final rupture. Seeing that they would have to spend the next day in the jury-box, they resigned their functions to his lordship. Constantly baffled in their desire to put something into the plaintiff's pocket, they gave up in despair.

This is the greatest instance I have known of prejudice and wrongheadedness in the jury-box, although I have seen many specimens in various degrees.

Having got Benevolence and Stupidity out of the jury-box, there does now seem a chance for Law and Justice. His lordships's opinion has been materially changed from what it was before he heard the evidence, and his mind is open to be convinced by arguments on the one side and the other. It is clear, too, that, whatever the result, his lordship is glad to



be rid of that special twelve-headed prejudice which would not permit so much as a fair trial, or, indeed, a trial at all before verdict.

At the sitting of the Court the learned judge announces that his opinion is in favour of the defendants upon the question as to whether the agent of the Insurance Company had authority to make the verbal bargain which the plaintiff swore he did, which verbal bargain the reader will remember was, that if the plaintiff paid five shillings, the insurance was to commence from that day. The judge thought he had no authority to make such a bargain. But his lordship was of opinion that the agent did in fact make that bargain, whether he had authority to do so or not. Here, then, the reader will perceive, was a case in which the evidence had all been given, and the effect of it upon his lordship's experienced mind was adverse to the defendants. If argument can change the judge's opinion, it will be something in favour of advocacy. If it cannot, it will show either that the facts are too conclusive for argument, or that the arguments have been too weak to dispose of them.

Before the defendants' counsel begins, it may be observed that the plaintiff's counsel argues on the first point as to the agent's authority; and he argues sufficiently to call upon the defendants to address the Court on both points.

Now, let me observe, that a roundabout way of arguing upon facts will not do. Facts follow one another in regular succession; they may not flow in a straight line, and seldom do; but you must follow their course if you would trace out the result. If

you dodge about for the purpose of making short cuts you will miss some little rivulet, may be, that has increased the volume and even had an effect upon the direction of the current.

In this case the facts have first to be *reduced to their true proportions*. It is apparent that many of them have been exaggerated, many unnatural inferences have been adduced, and several false conclusions arrived at. The superfluous matter then is trimmed away. It is seen to be superfluous, and the learned judge notes it by sweeping it aside.

The subject being bare, its exact shape and form are seen and the advocate asks, "What is the case?"—not for the defendant, but *for the plaintiff*. No matter what the defendants' case is at present, the judge is satisfied with the plaintiff's, and unless you can reduce that, you may as well sit down, because you cannot displace the plaintiff's case by any arguments about the defendants'. Therefore, the first question is, "What is the *plaintiff's* case?"

Now, mark; all irrelevant evidence is examined and eliminated; shown to be irrelevant, and then taken away. Ambiguous phraseology employed on behalf of the plaintiff, is also disposed of—demolished, with all its inferences, while forensic vituperation is collected like so much rubbish and thrust aside.

The plaintiff says that the defendants' agent told him that the receipt covered the risk from the date when the five shillings was paid. *That is the whole of his case*, and that question has to be argued upon the probabilities.

The agent has sworn the contrary, and therefore the conflict is conspicuous and direct. What is to

influence his lordship's mind so as to change it from a present belief in the word of the plaintiff to a future belief in that of the agent?

First, the *conduct* of the plaintiff and of the agent, and the *probabilities* on the one side and the other.

The receipt in express terms contradicts the plaintiff. The strong probability was, as the learned judge himself acknowledged, that the agent would *not* make a verbal statement in direct contradiction of the receipt he gave. Second probability is, that the plaintiff, who could read and write, would not take the receipt without looking at it.

Another *fact* was that, two or three days after, as the plaintiff himself admitted, he *did* read the receipt, and knew therefore that his goods were not covered.

Probability arising from this was that, if the agent had told him a lie, he would, on discovering it, have gone to the office and complained of the fraud that had been practised upon him.

Another *fact* admitted by the plaintiff was, that the agent had told him that if *the proposal* was not accepted the five shillings would be returned. Improbability arising therefrom was, that the agent should have covered the risk *for the intervening time for nothing*.

Then comes another fact. The plaintiff, after the fire, went to another insurance office, obtained a form, and applied for his money, but the place was closed. Probability, therefore, was, that he would then have gone to the defendants' office and made his claim, *if he had really been told that the risk was covered*. The fact was he did not go; but having set it about that he was insured in the

defendants' Company, a letter was sent to him from them, asking him to call.

The next fact was, that some considerable time after he did call, and then produced his receipt. He was told that the receipt did not cover him. He affirmed that it did, and that he should stand or fall upon that receipt. Probability arising from this fact is very strong; *if he had been told by the agent that the risk was covered*, and he had been fraudulently deceived, he would have said so when he was told at the office that the receipt was useless. It was clear he never said anything of the sort, because the question was put to the witness with whom he had had the interview, as to whether any such assertion was made, and answered in the negative; the plaintiff, however, *had not been asked a question about it in chief, nor was he recalled to contradict it.* From not having been asked the question in chief, another probability, amounting as near as possible to a fact, arose in overwhelming importance—namely, that he had never told his solicitor he had been deceived, and, therefore, no such complaint had got upon the counsel's brief.

Here the learned judge said he was satisfied that the agent's story was right, and the plaintiff's account wrong, and accordingly gave a verdict for the defendants.

The plaintiff's case had, in fact, been founded on vituperation and insinuations of fraud; the jury had been too ready, as juries often are, to let their hearts govern their heads, in which case justice is invariably turned topsey-turvey. They little think, however, in their ignorance of legal procedure, that

verdicts given out of sympathy in the face of facts and law, entail disappointment and loss on the unhappy victims of their compassion.

When Ignorance and Prejudice get into the jury-box, as they sometimes do, counsel have indeed a rough time of it. You cannot enlighten stolid Stupidity.

## JACK AND THE BEAN-STALK.

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### A CURIOUS PHENOMENON.

"Thither to haste, the region to explore—

"Was first my thought."—*Pope's Odyssey.*

A MISTAKE in advocacy is always worth noting. It is better than a maxim, and more useful than any meteoric display.

The following case is one of the simplest, and its moral one of the clearest. You will observe that I am not selecting my lessons from inexperienced advocates, but from the performances of those who are apt to look down with commiseration on the failings of the younger members of the profession.

In this case a Mr. Tent was sued by a Colliery Company for £94. Mr. Tent said, "I admit the debt, but I have a claim against you of a larger amount, because you agreed to supply me with 10,000 tons of coal during the year ending September, and in May you broke your contract, and refused to supply me. I claim the difference between the contract price and the market price from May to September." The issue, therefore, was simple, although it was necessary to read through a great deal of correspondence and to consider many facts.

This is how the bean-stalk rose.

Mr. Kewsea was engaged for the Colliery Company while Jack and Harry, two juniors, were retained by Mr. Tent.

When the case was called on, in the ordinary course of things the Giant would have accepted the admission of the juniors that their client owed the money, and remained quiet in his colossal strength.

But Kewsea was eager to take every advantage for the benefit of his clients, although this over-reaching advantage often turns out *not* to be for their benefit.

The pleadings did not admit the debt, so Kewsea availed himself of that technicality. The pleadings evidently were of more authority than the defendant or his counsel. "I don't care," says Kewsea, "about your admitting the debt; the pleadings don't admit it, so I have the right to begin." But it is not always, as the reader knows, the horse that is most rampant at starting which is first to pass the winning-post. I have seen him before now in a very ignominious position at the finish of the race. Get a good start if you can, but remember that a good ending is better. In advocacy it is not always wise to stand upon your strict rights. Concession sometimes wins.

The two juniors smiled together when they heard their gigantic opponent, with a deep voice, claim the "right to begin;" but his voice did not frighten them in the least, for although these giants are supposed to eat juniors up, Jack and Harry were brave little chaps, and they knew if they could only get the chance they could slay Mr. Kewsea, so they sat close up together on their seat behind him, and swung their legs and touched one another with their

elbows, and whispered, "We shall have him nicely by-and-by."

"He's got no case to open," says Jack; "we admit his claim."

"And he can't open ours," replied Harry, "because he doesn't know what it is."

"This is fun," said the juniors. "What is he going to begin about? Nobody has hit him."

"Perhaps he is going to tell the judge a nursery-story."

"I wonder if it's 'Jack and the Bean-stalk?'"

At this suggestion both the juniors were immensely tickled, and declared they would call the case by that title.

"He is to be the Giant," said Harry, "and we are to be the two little dwarfs he is to try and eat up."

One need hardly observe that it is as well before you attempt to answer a claim to ascertain what the claim is, and that you ought to keep your witnesses out of the box until the necessity comes for calling them. You have little use for them until there is something to contradict, to prove, or disprove.

Again, you leave them to be cross-examined and to give evidence for the other side. No wise man builds a ship on the top of a mountain.

How strange all these observations must seem to the youngest student! Yes, strange, indeed, but not unnecessary, since the temptation to begin is strong, sometimes almost irresistible. There is much in advocacy to learn that comes not of practice, and much to unlearn that comes of slovenly and unobservant practice. Here was not an inexperienced junior making this mistake, but one of the leaders, and therefore



one likes to follow thoughtfully and observe attentively until the bourne is reached.

Mr. Kewsea begins to open. You ask what? My answer is *Bradshaw*. Not irreverently do I say it, nor as if I would say "*bosh!*" I mean *Bradshaw*.

The railway map was produced, handed up to the judge, who looked as if he had seen it before, but said nothing. It was next handed back for the purpose of separating the map from the time-table. It was then re-delivered to the judge.

Now comes the solution of the mystery. It was pointed out that certain places on that map were west of a town called Cockermouth, and that there were other places which were not exactly west of Cockermouth. There was no disputing this, and if that had been Mr. Kewsea's case, it would have been a tolerably strong one.

The juniors smiled meekly, and quietly asked one another what it all meant. As a lecture in geography it was fairly well put.

Then the subject-matter of the opening changed, and observations were made concerning a pit's mouth. This doubtless had some reference to the coal trade.

The Court was next enlightened as to the mode of filling coal trucks, an interesting subject, no doubt, for a winter fireside, but why it should occupy his lordship's time was a mystery unsolved and inexplicable. And, thus, after enjoying this "right to begin," the learned Giant claimed the right to finish, which he exercised by observing that he could not conceive what defence there was to the action. Then the manager of the Coal Company was called and

was examined about a variety of things, chiefly to prove the circumstances under which the admitted debt was contracted.

But the bean-stalk is reared, and although it belongs to the Giant, Jack proceeds to climb it, and no doubt from the top he will be able to see a long way; and that is what he desires, for when you once get a good view of the situation you can make the most accurate calculation, and determine your line of operations with an almost mathematical certainty of success.

"Now," says Jack, from the top of his bean-stalk, "will you be kind enough to tell me, sir, whether the price of coals went up soon after the 20th September?"

That is an innocent question enough, just such an one as a child might put. And the witness answered "yes," like a man. It was prospective evidence, for nobody but the two juniors could possibly tell what it was going to lead to. The judge, however, carefully notes it, because he knows well enough that little Jack from his post of vantage can see a long way all round.

So his lordship says, "stop a minute, let me take that down."

But the Giant didn't know what it meant, nor his witnesses. It seemed such a far off, out-of-the-way sort of question.

"Did it continue to rise till the end of the year?" asks Jack.

"Oh, yes," says the witness.

"You say you entered into this contract with the defendants on the 20th of September?"

"That is right, sir."

"And he was only to supply the district west of Cockermouth?"

"That was all."

"Did you send coals to his order to almost every other part of England?"

"I did; but did not know it till some time after."

"I suppose the plaintiffs must have known it?"

"Oh, yes; but I have found out that these coals were not supplied under the contract."

This is one of the things Jack could see ever so far off. It was a fatal answer, as will appear. The question that follows is like pouring molten lead on to the Giant's head.

"*Under what contract then were they supplied?*"

"Under no contract," *must* be the ridiculous answer.

"Were they not delivered at the contract price?"

"They were."

"Was that two shillings a ton less than the then market price?"

"It was."

The counsel having got that fact leaves it. He has no wish to argue with the witness, but reserves his inferences for the judge. How delightfully the plaintiff's witness is proving the defendant's case will be seen by his speech hereafter, in which all these answers will reappear arranged in the most orderly manner, like birds and beasts walking into Noah's ark in the picture.

Both the juniors chuckled immensely, I thought too immensely, because it made Mr. Kewsea angry. Can the Giant prove any more of the defendant's case I wonder? The junior cross-examines still

further, and elicits answers which show that for eight months coals were supplied to the defendant's order for places outside the particular district, and not only so, but that one order in the district is actually objected to by the plaintiffs because it is one of their customers. A good and fatal point!

Then the Secretary is called by the plaintiff and by that means all the letters to him and the Company are got in in *cross-examination*, a much better way, under the circumstances, than getting them in in chief, because of various damaging questions interposed, and suggestive comments by way of question. This was the very gentleman who supplied the coals, saw that they were sent to the places *outside the district*, some to London, which was a long way north of the particular district; proves that the first list of customers sent to the defendant for the purpose of the defendant's contract contained places *outside the district*; proves that he knows all about the contract, that the directors knew all about it, and all about the places to which the coals were sent; knew all about the delay in supplying coals, the entry of them in the books at the contract price, and a variety of other things more or less useful to the defendant. No one ever knew why these witnesses were called when it was for the defendant to make out his case. But one knows that very often, when you get a considerable distance out of your way, you are apt in your perplexity to try and make a short cut to some place, if haply you may find your track; but it's awkward, sometimes dangerous, especially when you are being watched or pursued by an enemy.

Now, here comes the molten lead again.

Do you agree with the last witness that the coals supplied out of the district were not supplied under the contract?

A truly awkward question, because if he does agree it doubles the absurdity of the answer, which was already too big by half, and if he does not agree there is absolutely an end of that part of the case, which part is very nearly the whole.

But the witness agrees, which lets him in nicely for this series of questions.

“Were they supplied at the contract price?”

“Certainly.”

“At two shillings a ton less than you could have sold them for elsewhere?”

“Yes.”

How many tons which were not supplied under the contract?

Tries to make it 300, but is bound, on being gently squeezed, to admit eight hundred, in the month of November.

“Then you presented him with at least sixteen hundred shillings in the month of November alone?”

No answer. Could be no answer. What could a man say who sacrifices property belonging to his employers?

Mr. Kewsea writhed, but he didn't writhe a satisfactory explanation out of his witness or check the flow of molten lead.

“Did the directors know that you were selling their coals by the thousand ton at two shillings less than the market price?”

That again is an abominably awkward question,

and one would think framed expressly for the purpose of doubling the witness up in a heap.

The answer will be as good as a stroke of lightning, answer it as he will, and it will rive Mr. Kewsea's case from top to toe.

"No," says the witness, after careful hesitation.

"Then, how came you to do this?"

*"I knew the defendant was a friend of the directors."*

Oh, poor man! when you are driven to such shifts as that the judge gets his eye on you; and in that judicial eye there is a merry, sceptical and half-compassionate twinkle.

Now, a little observation will tell.

"So, without the knowledge of your employers, you present the defendant with £75 of their money out of pure friendship?"

"Pure friendship."

Ah! Mr. Kewsea, it is hopeless; re-examination may be useful to set a broken leg, but when your witness is blown to atoms, and scattered to the four winds you cannot put him together again. He is beyond the art of surgery.

The case is all over, but it is necessary, as a matter of form, to bury the remains decently; so the defendant comes to the funeral with the liveliest belief that he is going to get something handsome out of it, one ever saw depicted on a mourner's face.

What a splendid opportunity now presents itself for proving his own case if necessity there were for so doing! He has been corroborated by the other side before he opens his mouth. He fills up the little

gaps as nicely as possible ; contradicts when necessary with such circumstantiality that you can see the probabilities coming up all over the bed of facts like asparagus on a fine sunny morning after a warm shower.

Let this be noted by those who think the right to begin at all times a very fine and safe thing, and who are so vigorously agile that they must needs jump before they come to any style. *There is all the difference between contradicting and being contradicted.* The former process is nearly always the more weighty.

What you contradict is already weakened by lapse of time and cross-examination. Besides which, the contradictor has the better opportunity of surrounding his statement with plausibility and circumstantiality from which may spring irresistible probability.

The fragmentary evidence, elicited for the plaintiff by way of anticipation instead of answer, was discredited and almost dissipated by cross-examination before the necessity of contradiction arrived ; it was " torn in pieces or ever it came to the bottom of the den."

So the bean-stalk fell !

## A DEFENCE IN MURDER.

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It need scarcely be said that the most important case that can engage an advocate's powers is that of murder. In defending such a charge there is a sense of responsibility oppressive and exacting; a state of nervous excitation which no resolution can allay. You know that every question will be watched with almost painful apprehension, and silently criticised with ruthless severity; and you know also that a single slip on your part may plunge your unhappy client into the fearful abyss. What wonder, then, if at the last moment before trial you can scarcely comprehend a line of your brief, or bring your mind to analyse and collate the facts?

As the jury are being sworn your sensitiveness and nervousness increase, and you feel almost as miserable as the prisoner himself.

I cannot tell when you will "come to," but I know that as a rule advocates find themselves in a tolerably composed condition by the time the first witness presents himself to be sworn. This nervousness, let me say, is no physical disparagement, nor is it in any way to be regretted; it is at most a temporary discomfiture, and I hope for the sake of your clients you will never wholly lose it. Nervousness is a



vivifying power rather than a weakness. It adds fire to eloquence and quickens the most sluggish faculty. A dull clod of stolid humanity might make a good image for a tobacconist's shop, where indifference to passing objects is highly necessary, but he should never defend me or advocate my cause. I like a nervous advocate; an advocate who feels and trembles with burning eloquence.

But it is necessary to be at home with yourself when the first witness comes, because, knowing what he is going to say, you can pretty well test its value by an accurate measure of his capacity, and a tolerable estimate of his character. *Much will depend upon this.* After you have put a question or two in cross-examination which have been well considered, *so that by no possibility can they injure your client*, all will be well, so far as your mental condition is concerned. You may now proceed to the end of the business (for business it has become) fresh and strong, as if, after a long walk on a sultry summer's day, you had taken an invigorating plunge in a refreshing stream. And how alive the faculties all are! How closely you can examine the evidence. The smallest point is visible; the most insignificant flaw in that legal chain does not escape your scrutinising gaze. Nothing is too minute or too quick for observation. I believe you could almost follow a particular fly as he dodged in his devious flight among a crowd of his fellows. I cannot in the least pretend to analyse this state of feeling, and must leave it to medical philosophers; but I know that this state of intensified existence is experienced by some advocates, and I mention it because it has been so often asked "are you never

nervous?" Nervous beyond all capability of expression—beyond all power of comprehension. Nevertheless, that state of intense emotional vivacity must be *as far as possible concealed*. And the very effort at concealment will be beneficial, for it will call forth the power of *your will* to subdue and bring your whole self into subjection. When once this is accomplished you will be braced up for the coming struggle, however severe and disheartening it may seem.

Keep your mind upon the witness and you will soon forget yourself. It is *self consciousness* that you chiefly have to guard against. Under no circumstances let your mind wander from the case. Think no evidence and no word and no emphasis or accent unimportant. Examine every point, however minute, with a microscopical eye. The Court is crowded, but remember that to you there is no audience except the judge and jury, and if you so much as think there is it will be at the expense of your client.

You have a judge, a jury, an opponent, and a witness; that is your world, and you will find it large enough to engage your whole powers. Your client, even, is no part of it.

In a charge of murder as hopeless as a case could be, counsel had to rely on argument and suggestion; and even for these there was no place till he made room for them. I will briefly give the outline, not as an exhibition of any powers of advocacy, for they were common-place enough, but because it will show that an ordinary exercise of common sense may enable an advocate to make a tolerably respectable appearance in a bad case.

The prisoner was charged with the murder of his wife. The main evidence against him was the deposition of the dying woman, although it was not a "dying declaration." Without it there could be no conviction for the capital offence. In most cases, let me remark, according to my experience, *depositions of witnesses who are absent or dead are read without much analytical examination*; this is a mistake in advocacy. It seems, as a rule, to be assumed that as the witness cannot be cross-examined, the evidence must be accepted as almost beyond the range of criticism, at least beyond the power of cross-examination.

It was obvious in the present case that the dead woman *must be cross-examined*, and cross-examined she undoubtedly was upon every point of her depositions. Her evidence was analysed, her statements compared, contrasted, and, in one or two material particulars, turned in favour of the prisoner, although at first sight they appeared fatal to his chance of escape. The unfortunate woman had deposed that she was in bed, had been to sleep, was a little the worse for drink, did not hear her husband come up stairs or enter the room; that he dragged her out of bed and threatened to throw her out of the window; that he went to a drawer, where she knew a knife was kept, that he came towards her and threatened to kill her; that she stooped while he was assaulting her, and afterwards found she was wounded; that he then told her she had but a few hours to live, sent for a doctor and a policeman, and gave himself up. It is clear that if these facts could be handled skilfully there was a defence to be made, although it might not be successful. To acquit himself as an

intelligent advocate was all that could be expected of counsel upon whom the unwelcome duty was cast of defending.

In a case of murder, counsel called upon to defend, however hopeless the case, cannot resign his client to the gallows without a struggle. He must contest every point, argue upon every fact, and turn, if possible, the edge of the most fatal testimony. If he cannot base his cross-examination upon a reasonable hypothesis he must still cross-examine with some appearance of reason. He must lay some foundation for his speech, and he must address the jury logically, even though he base his speech on false or fallacious premises. From all this there is no escape; and, more than this, he must cross-examine upon the most deadly and damning evidence. But this much he has for his comfort — he can do no harm in attacking facts that are clearly and absolutely against him. He may kick these about as he likes, with the hope that something may turn up in the scuffle. While he cannot exaggerate a fact he may possibly modify it. A skilfully-asked question may produce an answer which will change the *colour* of a fact.

But there is another ground of consolation and encouragement. The judge is invariably *with you* in support of your weaknesses and to the aid of your necessities. It is the greatest glory of the English Bench, to my mind, that the judge, in a case of murder, is ever “of counsel for the prisoner.” He is not the Crown, but he is the crowning glory of our administration of justice. *No man in this country can ever lose his life against the conscience of the judge who tries him.* Strictly impartial and yet sympathetic;

rigorously just and yet tenderly protective. An English judge trying a man for murder is the highest and noblest illustration of the human character. I say this, not to compliment the Bench, but to encourage the youthful advocate on whom the task of defending in such a charge may fall.

Let me now remind you that *you must not cross-examine to any fact which is in your favour*. Whether you should cross-examine to a fact which is neither for nor against you depends upon your skill, your knowledge of human nature, and your confidence in yourself. If *you know that you will not make a mistake*, cross-examine by all means, because a neutral fact may be turned to your advantage, and if it be ever so slightly shifted or altered in appearance it will form the foundation of an argument, while every argument in the prisoner's favour is something towards a verdict. Remember, too, that in cases of life and death arguments will sometimes neutralise facts. I say this from experience, and therefore the more boldly.

A jury will generally, if possible, escape from the painful necessity of condemning a fellow creature to death. Just *indicate* the way; you need not lead. Sometimes, it is true, they are too rigidly conscientious, but it is not often the case, and their conscience, as a rule, backs their inclination on the side of mercy.

"I wish I could have cross-examined the wife," said the defending counsel; something might have been elicited to show a quarrel, or otherwise to reduce the crime to manslaughter. The wish contained the germ of the defence. The deposition could be cross

examined, and, above all, the lack of opportunity of cross-examining the woman herself afforded the opportunity of a creditable speech.

One argument, at all events, there was to start with—namely, that although the poor ignorant man, half-crazed by excitement, had had, as appeared on the deposition, “the opportunity of cross-examining the woman,” there was, in fact, *no opportunity at all*. This was a point to elicit tenderly in cross-examination. As the law holds opportunity in its strictness, there was opportunity indeed; but what if the jury should think differently? What if the judge should even think this a point not to be lost sight of in an appeal for the exercise of the royal prerogative? Let it then for the dear life, be cross-examined too. Thus it came out that the prisoner had been hurried from his cell to the dying woman’s bedside a few hours after the fatal wound had been inflicted. He was taken without notice, and without the chance of being represented by counsel or solicitor. It is a good point if the man is to be condemned upon the evidence of this deposition, and it will surely stand the prisoner in good stead somewhere, either with the jury or the judge, in fact or in law. In this dead case we want to extricate the counsel with credit as an advocate. As he is bound to do something, hopeless as the case may be, he must do it *well*, if possible. So he starts with this cross-examination of the police-constable.

“When was the prisoner taken to the bed-room of the dying woman?”

“Was any notice given to him that he was to be so taken?”

Counsel knows it must have been extremely short, if notice was ever given; *he knows in fact that no notice was given*, so the question is a *safe* one, and gets well answered.

“Had he counsel or solicitor?”

“No.”

A question that *must* be answered in prisoner's favour.

“Was the charge read over to him?”

“No.”

“Was he distressed and agitated?”

“Yes.”

Counsel knows this answer will be given. It is coming remarkably well, and carefully is it taken down in his lordship's notes. I need scarcely say that an advocate should ask no question which will not at least *seem* to be answered in his favour. *All the facts, therefore, involved in these questions have been carefully inquired into beforehand*, and he knows what answers will be given.

Then the witness appears, to whom the prisoner said, after the crime was committed—

“I've killed her, Jem. I did it with this knife.”

Fearful evidence: accurate and unimpeachable. How is it to be dealt with, either in cross-examination or argument?

In this way. First you want to neutralise the effect of the words “I've killed her.” Your question then will probably be, “*Did he seem excited?*” The answer you *know* will be “Yes,” because you can see it in the witness's manner and hear it in his tone. You get your answer, and from his eagerness to give it, you know that if you ask him, with

proper tone, "Did he seem sorry?" he will say, "Yes, sir; very sorry."

From what you *know* as having taken place, you will press the question, "Did you say it could not be true that he killed her?" The answer is "Yes." "Did he say 'Jem, it's *too* true?'" Jem says, "Yes, he did."

There's much argument to be used to the jury in that little word "*too*"—an argument *that there was no intention to kill*, and if you show that you may get at least a recommendation to mercy, which may come alike, for aught you know, from jury and judge. If you do, your man is saved, and that is the glorious triumph of your art.

But now, you see, you have a good witness in the box, whom, if you handle wisely and in accordance with the laws that govern and reveal human nature, you will do something more with him yet. You now know that he will say anything in favour of the prisoner that is possible. Then ask him this—!

"*Was the prisoner a kind and humane man?*"

"He was, sir."

"*Was that his general character?*"

"It was."

"*Was he sober, quiet and industrious?*"

"He was."

The next question you must put with somewhat more of preparation, for it is *the* one with which you desire to strike a lasting effect upon the jury before you sit down.

Let me ask you—"You have often seen the prisoner *and the deceased woman* together?"

"Yes, sir; very often."



"In their home and in public?"

"Yes, sir."

"Did he always treat her kindly?"

"Always."

"And seem fond of her?"

"He was very fond of her; and there never was a kinder husband or a more hard-working sober man."

There is nothing else to ask. All has been done that is possible by questions, and probably not a little by *effect*. Not one question but has been answered in your favour, and you sit down with a look from the jury, which affords you a trifle of encouragement for your future progress.

The doctor gives doctor's evidence—length, depth and nature of wound, with the consequence clear and hopeless. Still, you must try for something in the prisoner's favour. Is anything to be done with evidence of this sort?

To answer this, you must ask yourself again, *What is your defence?* What *can* your advocacy lead to?

Your only defence is that it was not wilful murder, but manslaughter. Knowing this, can you cross-examine the doctor? Can you elicit that the wound might have been occasioned without having been wilfully inflicted? That is what you have to do, if possible, but in heaven's name take care, or a single question may make your defence and the prisoner's chance of being recommended to mercy utterly hopeless. You will not ask if it might have been done by accident. The doctor would shake his head, and the most probable answer would be this:—

"Hardly." In all probability he would say no. Besides, the question is objectionable—it is a question

for the jury, not for the doctor. You must get, therefore, as far away as possible from this kind of examination, objectionable or unobjectionable. It is the answer you want, but it is just the very question you *must not* put if you value your reputation. What, then, is to be done? He is a clever man, this doctor. Can you not see that he is a humane one, who will help you if he can? *Is he not sympathising with the prisoner?* Has he not just given him a pitying glance? and do you not see that if you ask two or three questions, the answers to which will neither compromise his reputation nor strain his conscience, he will answer as favourably as he can, and perhaps save the life of the wretched man. Doctors are almost invariably humane.

At least you can try a harmless question or two, and if you cannot feel the way safely to *the* question you desire answered, you may leave him before it is too late.

"Where do you say, doctor, the wound was?"

The doctor describes it.

"Will you point out the exact spot to the jury?"

The doctor shows the place.

"Now first indicate the *direction*. I see, a little downward, is it?"

"Slightly."

"Then the hand might have been in that position?" (indicating that the arms might have been encircling the woman's body).

"Quite so," says the doctor.

"As if they were struggling?"

"Yes."

"Then it might have been done in a struggle?"

“Undoubtedly,” says the doctor; “*and in all probability it was.*”

That is the exact answer required, and not another question must be asked. Argument deducible from this that it might have been an accidental wounding, or at least that the jury may legally find a verdict of manslaughter. If you cannot get probability, at least endeavour to secure possibility, which is sometimes good enough for the jury.

There’s a good deal now that can be said.

It is possible to attack the statement of the dying woman. What was her physical condition when she made it? What the state of her mind and memory? What were the circumstances under which it was made? What is the nature of the statement itself? Does it disclose all that must have taken place? Are there gaps in it—expressions which are ambiguous, conflicting, or irreconcilable? of a twofold meaning? of a nature that one construction may be in favour of the prisoner, and another against him?

Whenever this is the case you have made a strong point, and that point may become the pivot upon which the defence may turn. If the statement does not contain a perfect narrative you have a fine opportunity for suggesting probabilities, and these, as you know, have often the force of evidence itself, sometimes, indeed, supersede it. Evidence may be deceitful or false, probabilities are never the one or the other, although you may draw a wrong inference from them. Cicero says that swearing to opposing facts is no good in the face of the strongest probabilities.

Again, circumstances are valuable only as suggest-

ing probabilities ; but if there be a gap in the circumstances you may suggest incidents, if they fairly arise from just inference from the other facts. Circumstances may not lie in the sense of not being what they are, but they often deceive *in not being what they seem*, and in not belonging to the series of other facts with which they are supposed to be connected. The strongest chain of circumstances is only a chain of probabilities, and if you show an improbability amongst them there is a weak if not a broken link.

In this case the moral guilt was reduced to constructive murder, that is, murder without the intention to commit it, although there was the intention to commit another crime.

The jury asked whether, if the intention was to commit grievous bodily harm and death resulted, it was murder. The learned judge said he was bound to say that that was the law of England.

The verdict was guilty, with a recommendation to mercy, a recommendation which, under the circumstances, developed by the progress of the case, and supported as it was by abundant evidence to character, was given effect to by Her Gracious Majesty.

## PEEPING INTO A JURYMAN'S MIND.

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It will sometimes happen during the progress of a case that a juryman is anxious to put a question. He is most frequently, with great judicial politeness, "shut up" by the judge, who tells him that "by-and-by" if he pleases, when the learned counsel has finished, if there is any question he would like to put, &c., &c. The poor juryman, who probably has never been in a jury-box before, feels awfully snubbed, although snubbed he really is not, and withdraws as completely within himself as a snail within its shell on the approach of danger, and the question is either forgotten or the juryman will run no further risk. Whenever this happens *be careful to remind the judge that the juryman desires to put a question.* It may be against you, or for you, or altogether irrevelant. In any event you will gain something from it—you will get at least a peep into the juryman's mind, and a peep through the smallest chink has often revealed strange things; they may be only small matters twisting about in the mental kaleidoscope of the juryman's cranium, but they may be very important for you to know, nevertheless. I have seen cases won by these little sudden peeps. Of course, the advantage is equally great, you will say, to the other

side. My answer is, that depends upon circumstances. Some men will glance in at a window, and see only their own reflection. Others will look in and see people inside, and learn a good deal of what is going on. Sometimes you will learn that the juryman is misunderstanding the drift of the whole case, bothering his poor head about some totally irrelevant matter; in any event, it will be useful to know what is passing in his mind.

## TWO MODES OF CROSS-EXAMINATION.

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LET us now take an example of a bad and a good cross-examination ; and I would like the student to ask at every question herein set down, whether or no he can determine for himself its quality. It will afford some test of his knowledge of the art of advocacy if he can. For I may say that every question I shall give has been put over and over again, even by leaders, without any definite calculation as to its value, or any knowledge of its practical effect, either on the mind of the witness or the jury.

Let us suppose a man to be charged with having, three or four years ago, at a country fair, purchased a horse, and paid for it with a bad cheque. The following cross-examination will disclose all the facts that are necessary to be known. The whole issue is as to the identity of the prisoner.

Question No. 1. " Had you ever seen the man who bought your horse before that day ? "

" No. "

2. " How long were you with him on that day ? "

" Several hours. "

3. " Were any other people present ? "

" Yes, many. "

4. When did you next see the man after that day ? "

“ Not till I saw him in the police station.”

5. “ Did you know him directly, or did you pick him out? ”

“ Knew him directly.”

6. “ How do you know him? ”

“ From his appearance.”

7. “ And will you undertake, upon your solemn oath, to swear he is the man? ”

“ I will.”

The first question is right, the second wrong, the third nearly right, the fourth right, the fifth, sixth and seventh, utterly wrong, *and the man must be convicted !*

The first question is right, because the defending counsel knows what the answer will be, and he must elicit it.

The second is wrong, because he does not know what the answer will be, and the witness will understand from its form how to make his reply as telling as he can against the prisoner.

The *fact* which the counsel, however, was desirous of eliciting was all important to the defence, and should have been got out of the witness *in favour of the prisoner* and not *against him*.

The third question was nearly right, because it was better to place the man to be identified among a crowd ; but it ought to have been put in a less direct form, for fear the answer should be against the prisoner. The witness evidently answered it as he did, because he thought it told most strongly in favour of his own accuracy and against the prisoner.

The fourth question was right, because no other



answer was possible, as was known to the counsel, not only from information communicated by the prisoner himself, but for many other obvious reasons.

The fifth was wrong, because it would be sure to be answered against the prisoner, and *could not, in the form in which it was put, be answered in his favour.*

The sixth was wrong, because it gave the prosecutor the opportunity of giving *reasons* for his belief, *making his belief look like a fact.*

The seventh also was wrong for the same reasons, and also because it was a mere repetition of what the prosecutor had sworn in chief. It was not cross-examination at all, and could only confirm the evidence already given. And, again, it was only asking the man whether he would *undertake* to do something. So that altogether it was as bad as all the other bad ones put together.

Let us now see another style of cross-examination to the same witness.

No. 1 is asked.

Instead of No. 2, let us ask *where* he saw the man. Then we shall get the fact, without asking for it or seeming to desire it, *that the man was with other people*; and the crowd in the fair or in the public-house will come out as nicely as possible.

Safely then, may be asked *what time it took place.* The witness knows nothing of your object, and answers you *to the best of his belief*, like a lamb bleating for its mamma, "Twelve o'clock."

But how, then, having got twelve o'clock, shall we keep them together several hours? By no means.

You wonder what time he left the fair to return to his home; and, not knowing what you are driving at, and that presently you are going to do a little mental arithmetic and reduce everything to minutes, the witness tells you that he *didn't stay long after the "ornary" which took place at one o'clock.* He is already afraid of making himself drunk, you see, and away he goes home, as sober as a judge "*about two to ha' past.*"

You see, you don't want the answer "*several hours;*" you will, if you are careful, reduce it to several minutes *without a single question with that apparent object.*

*What time had he finished selling?*

He sold the last pen just before one, all in good time for the "*ornary.*"

Things fetched a goodish price, that day he tells you, and you get out that *towards the latter part of the morning the market got a little brisker like,* and he, being as shrewd a man as any in the place, had reserved a smart deal of stock till the last, *so that between eleven and one he was pretty busy like.* And there not being much chaffering about the price of the horse, as you know there seldom is when a rogue buys who doesn't mean to pay for it, the thing's done, bless you, and the prosecutor too, both by the thief and your learned self, in a few minutes: before he has so much time as to observe *whether the man had blue or grey eyes, a brown neck cloth or a white one, a light grey overcoat or a shooting jacket:* how could a man after three years he plaintively observes, almost weeping, be expected to give the colour or shape of a man's coat, or even tell whether he had brown or grey

*whiskers or any whiskers at all?* He couldn't tell you the colour of his own necktie or coat on that day. It is not to be expected.

"*Impossible,*" he says "*my lord.*"

Poor soul, he doesn't think what he's doing, and that he is being turned into as good a witness for the defence as it is possible to have. The learned counsel knew full well that there was not a question he put to this witness that he *could* answer, try as he might. And further, he has not put one question which he *could* answer as the witness liked, or refuse as he liked, *but would have been in the defendant's favour.*

Let us take any one. Suppose he had said that the man who cheated him *wore a beard*, but added that *he had shaved it off* since. His case must have been over, if you couple that fact with another fact, namely, that *he had never seen the prisoner before or after the occurrence.* So of every question; the answer, if near the mark, would have been a guess, and if he could not even guess, his evidence would be destroyed. But if you want to pound the poor man still more it is possible to do so. Just try the effect of this upon him:—

*Can you tell me, without looking at the prisoner, what is the colour of his eyes?*

He certainly cannot; and although he turns instantly to the prisoner, the prisoner as instantly turns his eyes modestly to the ground, so that no information is to be got from that quarter. Now then, as you know perfectly well that the witness has been trying to get a sight of the prisoner's eyes, and has not directed his attention to his necktie or waistcoat, you may safely and suddenly ask him about

either or both of those articles, and you will find that he cannot answer you. Notwithstanding all this, if you really desire to show how utterly worthless such evidence of identity is, you may do a great deal more than you have yet done. But what I am now about to indicate requires some skill and judgment in framing your questions.

*Be careful you do not get an accurate portrait of the man made up partly from his own clumsy description to the police, and partly by the description of the man to the witness by the police.*

I cannot put down questions here which would be a safe guide, because I should like first of all to see the witness, for it would depend upon the kind of man he was as to what question should be put first on this subject. Further, I should like to know from the police-sheet containing the report of the robbery (and which is not evidence unless you make it so) *what kind of description was given of the thief by the witness immediately after the swindle*, if any description was so given. But be sure of this, that if he has given one *which does not tally with that of the prisoner, it will ensure an acquittal.*

I need not add, that a cross-examination of the kind indicated, when the case depends entirely upon the prosecutor himself will be certain to break him down and obtain for the swindling rascal the "*benefit of the doubt*," which is a doubtful benefit to society, notwithstanding society's love of fair play.

AN IMPORTANT CASE OF FOWL STEALING  
SHOWING THAT A SOLEMN OPENING MAY BE FOLLOWED  
BY A LUDICROUS "SHUT-UP."

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"GENTLEMEN of the jury, I must beseech you to dismiss from your minds all that you may have read or heard of this case, and come to the consideration of it with unbiased judgment. Gentlemen, from the village of Chorbakon to the village of Clodthorpe where the prisoners resided, is two miles. (Attorney whispers something with intense agitation). "Oh—beg your pardon, gentlemen, I am sorry, it is two miles and seventy-six yards."

"Where do you measure from?" asks the judge  
"Is there any map of this part of the county?"

There is tremendous excitement in the "well" of the Court; the attorney and his clerk vigorously stare at one another for some two minutes, then the learned counsel stoops and asks if there is a map or plan.

"N-n-no!" stammers the solicitor, "Treasurer won't allow plans—disallowed expenses in last murder case—man acquitted for want of plan—scandalous detriment to administration of justice won't allow surveyor's fees."

"No, my lord," says the counsel, "I am told there is not a plan, my lord."

"It's a great pity, says his lordship, with a twinkling smile; "if you are desirous of being accurate, and it is necessary to go into these minute particulars, we ought to have a map. This is a matter apparently of yards and feet; it may be inches for aught I know. Where do you measure from?"

"Pump to pump," whispers the attorney, with his hand sideways to his mouth so as to shoot the sound into the ear of the counsel.

"Pump to pump," repeats the counsel.

"Wait a minute," says his lordship, "let me take that; if anything turns upon it—pump to pump—does anything turn upon this?"

The solicitor turns upon it with great rapidity, and says:—

"We trace them. Oh, yes, yes, we trace them, of course—pump near the pound."

"The case for the prosecution," says the learned counsel, "is that we trace them on the night in question along the road from Clodthorpe to Chorbakon. They left Clodthorpe at five minutes to eleven, and the policeman who will be called will say that they were both under the influence of beer."

"But, surely," says his lordship, "they did not get so influenced by going from pump to pump; if so, they are the most extraordinary pumps I ever heard of." (Great laughter, notwithstanding the solemnity of the prosecution.)

"Gentlemen," continued the imperturbable counsel, "I shall show you that from the high road that leads from Clodthorpe to Chorbakon, there is a pathway across the field leading up to the house of the prosecutor where the crime was committed. Along

that path there were footprints. The night was wet and the nature of the soil was such that the impression of a boot could easily be seen. I shall show you beyond all doubt that one of those footprints was the footprint of one of the prisoners at the bar—(sensation). That will be an important matter for your consideration. Now, gentlemen, that being so —

“*What being so?*” whispers the counsel for the defence.

“Please do not interrupt. I shall show you, gentlemen, that on the coat and trousers of one of the prisoners there were stains of blood—(more sensation—I shall also prove that when the prisoners were asked what time they reached home, Walker said half-past ten, and Shuffler said five-and-twenty to eleven; so you see, they gave different accounts of the time of their arrival. They also contradicted one another as to the time they left Clodthorpe, and you gentlemen, will have to say whether, taking all these facts together, the prisoners are guilty of the crime with which they stand charged.”

In all this opening there was not stated a particle of evidence against the prisoners. But you could not stop the case, inasmuch as the judge would be obliged to say the opening speech is nothing, with which observation you might conscientiously agree, feeling at the same time that there was a good deal of it.

Now comes a stalwart member of the “Force,” with a large pair of dirty, hob-nailed boots, carefully tied up in manifold papers and fastened with many strings, as though there was danger of the boots making their escape. There’s a charming innocence about provincial policemen which is always amusing

and sometimes dangerous. They invariably get prisoners to take them into their confidence, as though the police were their legal advisers or their best friends, and would do anything to get them acquitted.

"Where was you last night, Jack?" asks the friendly and familiar "Robert" of the provincial force.

"At Clodthorpe," answers the prisoner, whose name was Walker—a true answer, which the constabulary cross-examiner notes against him.

"What time did you leave, Jack?"

"About ha'-past ten," says Walker.

"Ha! and what time did you get home?"

"About a quarter past eleven."

"Was anybody with you?"

"Yes."

"Who? Was it Shuffler?"

"Yes," says the ingenuous Walker."

"Did he come home with you?"

"Yes."

"You didn't steal any fowls from Mr. Bodgers, did you?"

"No," says Walker, "I didn't, and never went near the place."

"Oh," says Robert, "but there was a robbery between half-past ten and half-past eleven, and I shall take you on suspicion. Let's have them there boots, I thinks they'll correspond. So I took the boots," adds the active and intelligent one, "and found they co-responded 'exackerley.'"

"You compared them?"

"I did."

"I object," protests the counsel for the prisoner;



this man's opinion as to whether the boots co-responded is not evidence. (Laughter).

The judge takes a note of the objection.

“I then went to Shuffler's father,” says the policeman, “and axed him if the son was in.”

“What he axed the father behind the prisoner's back is not evidence,” objects the counsel for the defence. (Laughter).

The counsel for the prosecution submits it is ; good quarter sessions evidence of the excellent quality of hearsay—“something,” he avers, “accompanying an act.”

“Not evidence,” says his lordship.

(Attorney for the prosecution is quite thunder-struck ; never heard such law laid down since *he* was clerk of the peace.)

“What did you do next?”

“I axed the father for his son's coat and trousers.”

Objected to.

“More wishy-washy than the last,” holds his lordship.

But the coat and trousers are somehow produced by the intelligent constable, and he says that there was a kind of “down” on the trousers. (“A downy observation that,” whispers the usher.) But the policeman adds, with awful emphasis, which makes quite a sensation in Court, that “there's stains of blood or summat just like it in the trousers.” There was first, sensation, and then laughter, in which his lordship tried not to join.

Then he described how he cross-examined Shuffler when he had succeeded in getting him into *his con-*

*fidence*. After which the policeman's turn to be cross-examined came, and a dire retribution it was.

"Is it your practice to cross-examine prisoners?"

"Well, sir, it's yushal like to axe 'em a bit."

"Why?"

"To see if we're to take 'em into custody."

"But you had them in custody. Was it to make evidence?"

"It was to hear what they'd got to say."

"About what?"

Robert rubs his chin.

"What did you cross-examine them for?"

"For the Clerk of the Peace."

"But hadn't you enough evidence without putting these questions?"

That was awkward for Robert. He is blocked whichever way he turns, and all the friction produced by rubbing his chin will not help him. The jury wait his answer, and not getting it, look up into his face, which is as red as the judge's gown. He is evidently considering, if consider he can under such circumstances, what answer he shall make. He wishes the counsel would repeat the question, so as to give him a fresh start and a little more time. But the advocate knows better than that. When he gets a witness into a hole he keeps him there, and, if possible, shuts the lid down. The judge looks at him, a rebuke in itself, and then, with monosyllabic terseness, says:—

"Well?"

After a further pause Robert is asked:—

“ What did the Clerk of the Peace want with it? ”

“ For a remand, I s’pose.”

“ Was there not enough evidence unless you made some ? ”

“ I s’pose there warnt, sir, if you come to that.”

“ Did the clerk say so ? ”

“ Yes, sir.”

“ Then, wanting it for evidence, did you say, ‘ Now, Jack, my friend, at present there is no evidence against you, but just answer me a question or two, and I’ll soon make some. I will write down your answers so that there will be no mistake ? ’ Did you say that by way of caution ? ”

“ No, sir.”

“ Do you know that the learned judge is not allowed to put a question to these men ? ”

“ Don’t know, sir ; s’pose a judge can do what he like.”

“ Did you make a note of the conversation ? ”

“ No ; but the Clerk of the Peace did.”

“ Is he the solicitor for the prosecution ? ”

“ I believe so.”

The policeman gladly enough left the box, and as there was no evidence the prisoners were acquitted. Robert’s opinion that there was a correspondence between the boot and the footprint was worth nothing. There might have been another boot of the same make, or another person might have worn the prisoner’s boots on that night. Besides which, the policeman had taken the shoe belonging to the other prisoner, and that not only did not correspond with the impression on the

ground, but differed entirely from it. The down on the trousers was no more evidence that the wearer had stolen a fowl than a button off a policeman's coat in the possession of a little boy, would be evidence that he had swallowed a constable.

## AMATEUR CROSS-EXAMINATION.

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IN the trial of Rush, in 1849, for the murder of Mr. Jermy, the prisoner defended himself. The principal witness against him was Emily Sandford, who had been governess to his daughter. This witness he had seduced under a promise of marriage. She gave material evidence for the crown as to Rush's absence from his home at the time when the murder was committed; also as to his conduct on his return, especially his telling her, should she be asked how long he was absent on the night in question, to say about ten minutes. Almost every question the prisoner put in cross-examination was dangerous, if not fatal. But among others he asked this with a view to showing enmity and spite on the part of the witness :

“ Have you not told me you would make me repent of not keeping my promise to make you my wife after the birth of the first child ? ”

This question was damaging in every way, even without an answer, and consequently the worst form of question that could be put. It was based upon the assumption that the witness *had been swearing falsely against him for the purpose of taking his life, and yet it assumes that she will not commit perjury in answering*

*his question.* In either view her answer must be against him ; but if there had been reason for putting it, still it ought not to have been put. Had she ever threatened him in the manner alleged, a skilful cross-examination would have elicited the fact without the question ; and long before any such question was necessary, would have made it unnecessary by her manner in the box. It is the worst form of cross-examination that simply obtains a denial to what you wish. But this question drew more than a mere denial. This was the answer the witness gave with solemn emphasis, and amid profound sensation in Court :

“ I told you when you broke your promise, that before you died you would repent of not keeping your word. I told you that you would never prosper after breaking such a promise. You said I had made you a reformed man, when I charged you with being unfaithful, and you promised solemnly to marry me.”

These were awful words, and their reproachful accents must have been remembered by the prisoner with fearful clearness, while their prophetic truthfulness was rendered plain in that dreadful moment.

Mr. Baron Rolfe, in sentencing the prisoner, made these observations :

“ In the mysterious dispensations of the Almighty, not only is much evil permitted, but much guilt is allowed to go unpunished. It is perhaps, presumptuous, therefore, to attempt to trace the finger of God in the development of any particular crime ; but one has felt at times a satisfaction in making

such investigations, and I cannot but remark *that if you had performed to that unhappy girl the promise you made to her*, the policy of the law which seals the lips of a wife in any proceeding against her husband, might perhaps have allowed your guilt to go unpunished."

MR. BAGPIPES, Q.C.

“ABUNDANCE OF ELOQUENCE.”

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“Whether do you judge the analytical investigation of the first part of my Enthymem deficient *secundum quoad*, or, *quoad minus*, and give me your reasons, I say, directly.”—*The Vicar of Wakefield*.

THE Marquis of Salisbury, at the City Carlton Club, St. Swithin's Lane, on the 22nd of November, 1883, said :

“What hinders every public body in doing its work is the abundance of eloquence which is displayed : *it is that which blocks the Courts of Law*.”

I was pleased to read this expression of opinion from so high an authority.

Let us consider what a “block in the Law Courts” means ; not a temporary inconvenience, but a denial of justice, and frequently ruin to unfortunate litigants. And if this is ever caused by *superabundant eloquence*, it is a cause for which the bar and not the judges are responsible, and which should be removed by a vigorous self-sacrificing effort. Far more time is wasted in *banc* than at *nisi prius*.

Judges, long since passed into oblivion, have imposed many useless precedents on the present age, and lawyers too often exhibit their analytical powers by dividing mysterious points to an indefinite degree, multiplying every germ of evil which they



find in the fungus-producing books of a rotter system of procedure.

Your good old pleader, with his subtle distinctions and absurd niceties, was a master in the art of unreason. Mr. Bagpipes was the man of the old days, a pleader of the ancient school, and possessor of "abundant eloquence." Let us for a moment return to the old days and see this legal prodigy preparing himself for attacking a verdict.

Piled around him are law books of every variety: text-books and reports innumerable; and you ask yourself is it possible that in eight hundred years the judges have not been able to determine what is false imprisonment, and whether a jury shall or shall not decide the amount of damages to be awarded, after seeing the parties and the witnesses and hearing the facts?

Is this intolerable block to be due to intolerable eloquence? The heaps of books would indicate that the law is still uncertain. Malice is a difficulty: reasonable and probable cause is a difficulty; damages are a difficulty: various and conflicting decisions are a difficulty: *dicta* are a difficulty, and counsel are a difficulty.

Mr. Bagpipes takes out his glasses, and adjusts them with as much ceremony as if he were about to examine a minute insect; then he looks at the pleadings, and now begins to "argue." The three judges, having taken a note of the case, sit back, and give themselves up with judicial resignation to the operations of the learned gentleman, entrenched as he is, in a fortress of *authorities*.

The first point is as to misdirection. On he goes

with his "abundant eloquence." Cases are cited, distinguished, compared and contrasted. Cases of years ago; cases of yesterday week; on they come like a devastating flood! But the verdict is safe so far as misdirection is concerned. The arguments do not weigh with their lordships, and, not weighing, are repeated again and again.

The next point comes as to *reasonable and probable cause*, one of the most fecund sources of legal protoplasms. Hear Mr. Bagpipes on this! What a torrent of words! mark how they rush and fall like water over the wheel and into the millpond, where they foam and flash and boil and eddy in a whirlpool of eloquent confusion. Decisions this way, decisions that way, decisions no way at all, cited and animadverted upon as though they were all in favour of the plaintiff; *dicta* innumerable dragged to the blushing light, and one old decision from the mouldy archives of superannuated imbecility put forward as something quite startling, till everyone wishes the old man of the past, when he went to his last resting-place, had taken his decision with him.

For a moment, oh, unhappy mischance! one of the judges ventures "to interrupt" this intrepid advocate. It is but a casual observation, but it is like throwing a spoonful of water into a raging furnace—it explodes into steam. On goes this wonderful man, till he comes to the case that everybody comes to in actions for malicious prosecution and false imprisonment. Oh! the poor judges, how they all twitch!

"Really, Mr. Bagpipes, are you going into that case? We all know it."

"Yes," says the learned counsel; "but the principle of that case has never, I submit, been rightly understood. I submit it is on all fours with mine."

So he mounts the case and rides it at a gallop for a full hour, when it is time to adjourn for lunch. A consultation takes place; more arguments are prepared, more authorities collected, and in due time the torrent again commences. One of their lordship dozes. Never mind, Bagpipes, pour it into the other two. So on and on he goes from point to point from case to case, with useless energy and boundless wordiness, till the judges, wearied of the interminable iteration, indicate unmistakably that they are "*against him*;" and he collapses into silence.

His client congratulates him on his ability to keep up a hopeless case for so long a period; but the client who has to pay for this "abundant eloquence" will learn that keeping up a hopeless case is something like keeping up a fire by throwing your furniture upon it.

We enter another Court, and there, strange to say is this same Bagpipes, foaming and frothing away at the jury with the most tremendous eloquence. Just listen to his speech, and if you can make a sentence out of it or form an idea of the nature of the case, you will be more fortunate than the jury who have been listening for the last hour, and can find neither argument nor reason. He reminds me of a porpoise in the ocean, which keeps turning head over tail. This gentleman, in his sea of words, appears and disappears. Up he comes, and down he goes. You watch for him, and before you can say "There he is," behold, he is gone!

“Gentlemen, can you believe the plaintiff? You saw his manner in the witness-box. You heard his evidence. Can you believe it? Is it possible? Where’s Mr. Skip? Why is he not here? I will tell you, gentlemen, why he is not here, because they dare not call him; he dare not go into that box; he is not here for a very good reason. I thought they wouldn’t call Mr. Skip. If they had, I should have asked Mr. Skip a question or two which Mr. Skip would have found it perhaps *very inconvenient* to answer; but he’s not here, and I am entitled to comment. Oh! very well, I was not aware of that. My friend, Mr. Meek, assures me that Mr. Skip is *dead*. Well, then, gentlemen, I will say no more of Mr. Skip. I only wish he had been here; he would have proved my case.”

Bagpipes always seems to think that anything will do for a jury; but he’s a very popular advocate nevertheless, for, as we look into another Court, *there he is again!* With unflagging energy he is thundering away at the jury, and there seems to be a great similarity in his speeches. It cannot surely be one speech that he delivers in every case, otherwise here must be a great similarity in the cases.

Now, an inventive mind like Bagpipes’, always finds this similarity in cases, be it a breach of promise, a running-down case, a railway accident, or an action for the non-delivery of potatoes.

“Gentlemen, can you believe the *defendant*? You heard him give his evidence, and saw his manner in that box. But I should like to ask, gentlemen, *why the defendant’s wife is not here?* Is she kept away? Are they afraid to put her in that box? I should like to

have seen her there, gentlemen, for I should have put a question or two to that lady which she might have found it *rather inconvenient* to answer. Inexhaustible fertility of brain! Why isn't someone else here? Where is Snooks, and where is everybody else who isn't here? (He is reminded by the learned judge that the people he requires should have been subpoenaed by his own client). But Bagpipes doesn't care for this interruption. "Gentlemen, you saw how the defendant looked when I asked him if his mother had been convicted of bigamy: he lost his temper, gentlemen, and how can you place any reliance on a man who loses his temper? It is best to clear these things up as we go, gentlemen, and the defendant ought to have been grateful for giving him the opportunity of denying it." On he goes in his everlasting turmoil; over and over tumbles this forensic porpoise in his sea of words, the jury not being able to keep their eye upon him for a single moment. "There he is!" says one; "don't you see him?" No. Alas he is gone again! Does any one suppose he ever *wins* a verdict? He never does and he never did. The most that can be said of him is, he does not *always* lose it. His facts sometimes are too strong for him.

Bagpipes aspires to Parliament. Not that he knows anything of politics, but because he thinks if he gets into Parliament the road to promotion is open.

Oh, Bagpipes! there may not be much pathos in a grindstone, but it is a musical instrument of the sweetest kind compared to thee, and gives forth more melody than thou ever squirted into the ears of a much-enduring public.

## THE MINUTIÆ OF ADVOCACY.

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TECHNICAL education may be an excellent thing, but technical advocacy is a public nuisance. No advocate should aspire to the distinction of being technical. Justice is not technical; Pettifoggism is.

The Court of Appeal is often battered with small shot technicalities. It may dislike them, try to ignore them, and discourage them; but it is bound to listen to matters of insignificant concern, and to decide questions which would be a waste of judicial power in a county court.

The technical man wrangles over every word in every statute that comes under his notice. If he can't explain away the clear meaning of an Act of Parliament, he tries to get behind it and show "*what the intention of the Legislature was.*" If that will not do in the face of plain, common sense, he has recourse to Webster, Johnson and a host of other dictionaries.

I have known such exceedingly fine points, that they were invisible to the naked eye of common sense. The technical advocate argues that a certain *insect* is an elephant; points out his trunk, his tusks, his tail. Their lordships shake their heads and smile.

“No elephant,” Mr. Jones, “only a minute, infinitesimal, legal flea”—which gets killed.

The case advocate is truly great in the legal doctrine of resurrection. After cases are dead and buried they are dragged forth again from what should be their last resting-places and paraded as instances of the incapacity of our system to produce finality. Truly there is no more difficult work than killing legal proceedings. But the “case advocate” not only brings up the defunct carcase of his own cause with a view to galvanising it into spasmodic activity but digs up some old skeleton buried centuries ago and tries to clothe that with the fashion and circumstances of to-day.

This is called a “*Precedent*,” and if the effigy be like in outline it may deceive those who are not too well acquainted with the science of anatomy.

Referring to this elaborate science of technicalities Lord Coleridge\* on his recent visit to America, is reported to have said that the old pleader (almost an extinct animal) “attached more importance to the statement than to the substance stated.” I cannot in concluding this subject, do better than quote his lordship’s words:—

“It is high time that something was done to expedite, and amend, and simplify the common law which deserves all the praise which your chief judge and Mr. Evarts have lavished upon it, and which some thirty years ago was in serious danger. It has become associated in the minds of many men with narrow technicality and substantial injustice. Thi

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\* *Solicitors’ Journal*, November 10th, 1883.

was not the fault of the common law, but it was the fault, if fault it were, of the system of pleading, which, looked at practically, was a small part of the common law ; but very powerful men had contrived to make it appear that it was almost the whole of it—that the science of statement was far more important than the substance of the right, and that rights of litigants themselves were comparatively unimportant unless they illustrated some obscure, interesting, and subtle point of the science of stating those rights.”



## CICERO'S DEFENCE OF ROSCIUS.

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“Now,” says the reader, as he glances at the heading of this chapter, “I am on familiar ground. I knew Cicero before I knew ‘The House that Jack Built.’”

“But still,” I meekly observe, “You will agree with me that there is more of ‘The House that Jack Built’ than Cicero, in many of our modern trials. Otherwise how comes it to pass that simple cases with a single point last a fortnight, three weeks, or three months? Are judges less learned or juries more stupid than they were? By no means. Counsel have improved in their wind of late years, and clients seem to have greater facilities for raising it. But for ‘The House that Jack Built’ how comes it that in a civil case you may have the plaintiff on his trial for forgery, the defendant for libel, and the witnesses for other crimes? How comes it that learned leaders wander away into the regions of “railing accusation,” instead of keeping to the homely paths of fact that lead direct to the issue? This is the fault of the shepherd boy who leaves his sheep to chase a butterfly or climb a pollard to see if there is a ghost in its hollow. What of pursuing

character when you ought to be wrestling with facts and probabilities? Is a suggestion of forgery an answer to an action for breaking the plaintiff's leg? That was not Cicero's style. It was no matter what path he travelled, or if he were in a wilderness without a path, his art ever pointed to the issue, and straight was the course he made for it. No butterflies and no ghosts in hollow trees for him; he dealt with hard substantial facts and visible probabilities.

But now let me ask the reader, whose intimate acquaintance with Cicero is of so long standing, what are the lessons in advocacy the great master teaches? He does not teach eloquence, for that has never been taught since the world began, any more than poetry has been taught. He taught many things which ordinary minds can grasp. But what he teaches he also learnt. One can see that he studied *order and arrangement*, human nature in its complex and beautiful mechanism, its passions, prejudices, and its innermost sources of action; he learned to measure its strength and to probe its weaknesses; he knew its ailments, and their proper treatment. He did not appeal to the passions when he had to attack prejudices; and where human weaknesses invited his skill, he did not waste his energies in higher conflict.

The whole of Cicero's speeches are constructed on the same lines; and, advocacy, in the humblest branches, constructed upon those lines, will achieve marvellous results. You will perceive in all the great advocate's speeches the same symmetrical proportions, the same mode of construction, and if I may be

permitted the expression, the same elevation of surprising beauty.

One has known voluble speakers hammer away at a case regardless where the blows may fall. There was a waste of strength here, and a mis-directed energy there, which you never detect in Cicero. A general onslaught is not the way to attack the case made against you. Cicero does not pour a shower of platitudes on the surface of a case, otherwise it would be like a wave dashing itself upon a rock—it would roll back, but the rock would remain uninjured. He attacks a single fact or an improbability at a time, and never leaves it till he has destroyed it, if destruction be possible. He does not attempt to remove at once all the stones in an arch, but the keystone only, and if he is successful there he leaves the rest to fall.

He knew that many strong facts may rest upon a weak one: to the weak one then he directed his efforts. No fact in a case can stand alone; if it be not attached to another fact, it will and must disclose an improbability. It is the improbability in that case he belabours.

We approach the perfection of speaking when an advocate, skilled in his art, without witnesses, successfully attacks an apparently strong case that has been made against him. He is thrown upon his own resources. Facts are proved, so far as evidence can prove them, and it is a noble task to demolish them by argument. There is something more here than fighting a compensation case, in which, usually, there is about as much art required as there is in a well-organised wrangle between two accountants' clerks.

The speech for Roscius, though not to be approached for its eloquence, is the line upon which, consciously or unconsciously, are framed all successful defences. I say unconsciously, because, without studying the particular model, the same art is exhibited where the advocate has any knowledge of human nature and any skill in argument. Where you have no evidence the facts on the other side can only be met by argument, and argument must proceed upon their improbability. That is the key. But to show the improbability requires a carefully-trained mind, educated in the motives, the passions, the weaknesses, the cunning of human nature. Let us test these observations by a short examination of the defence in the case before us.

Roscius was charged with the murder of his father. The case, according to our modern and enlightened view, would not present any great difficulty. I know many juniors, and one or two leaders, who could have got Roscius off had he been tried at the Old Bailey. But the difficulties of the case are not to be judged by our modern system of criminal law or criminal procedure, and indeed are nothing to the point in the matter of dealing with the case. If it had been ever so difficult the line of argument would have been the same, although the result might have been different. What then, was the nature of the defence? I pass by the skilful apology which Cicero makes for appearing in the case at all, and the means he takes to impress the judges with the difficulties of the task, in consequence of the nature of the Government he indirectly attacks and charges with tyranny. He

goes directly to the motives which influenced the prosecution.

Suppose these motives had come last instead of first in the order of his speech, their effect would have been nearly lost, because they could not have a retrospective effect so strong as to impart a colour to his past arguments. In placing them first they followed the speaker, and gave strength and effect, force and distinctness to every word he uttered.

The motive is that Roscius may be got out of the way in order that Chrysogonus, the Director of Rome, may enjoy the estate which belonged to the father of the accused: and Cicero asks that this may not be permitted, and he asks this, not merely in the interests of his client, but he extends his advocacy and makes his cause the *liberties of his country*, which would not be safe if such a prosecution were successful. The judges themselves, therefore, by this stroke were placed on the side of the defence.

So one sees what powerful arguments may at times arise from an investigation of the motives which inspire a criminal prosecution.

If the motive of the prosecutors be avarice or plunder, it follows that the judges are asked by them to become instruments of plunder and avarice, by enabling the movers of the prosecution to carry out their object. A judgment adverse to Roscius would give them legal possession, so the judges are in fact insulted by the prosecutors. Good knowledge of human nature here, and marvellous skill in applying it!

Now comes a history of the father of the accused.

His character and position are described ; and differences between him and the two Roscii of Ameria are glanced at.

Then it appears that while the accused, who was a farmer, was at Ameria, attending to his country affairs, and Titus Roscius every day at Rome, the old man was murdered as he returned one night from supper, a circumstance which Cicero hopes will give a pretty good intimation of the persons against whom the presumption of guilt is strongest. Probabilities again. So that what with motive and what with presumption, he starts very fairly on his course ; for, given motive and presumption you go a long way towards awakening suspicion, and suspicion cast on the prosecution is a strong auxiliary in a defence.

Now he arrays the circumstances of suspicion, or rather of that presumption which awakens suspicion against the prosecutors. After the murder, a creature and dependant of Titus Roscius, within a few hours, having travelled fifty-six miles in the dark, brings the news to Ameria, and tells it, not to the son, but to his enemy *Titus Capito*. Four days after, the news is brought to *Chrysogonus*. Then, not to take up the time of the Court, a consideration in those days if not in ours, these disinterested parties *enter into a confederacy*.

Now comes the account of what the confederates did. *Chrysogonus* buys at an auction the estate of the deceased man, who was entirely devoted to the interests of the nobility. *Capito* takes three of the best estates, while *Titus*, in the name of *Chrysogonus*, seized the rest. Things fetched apparently very

little at the sale—£50,000 worth commanding only a few pounds. In the meantime the worthy Titus, the agent of Chrysogonus comes to Ameria and seizes the estate of Cicero's client, drives him naked, my lords, from the house of his father, the seat of his ancestors, and the altars of his family; he took many effects openly to his own house and *secreted* others, lavished some upon his confederates, and sold the rest by auction.

No wonder the people of Ameria wept. The poor son, the accused, was left in poverty, and these great men enjoyed his property! There was not a man who would not rather have seen the whole party writhing in flames than this Titus swaggering and domineering in the spoils of the excellent and virtuous Sextus!

The inhabitants of Ameria, therefore, pass a resolution, and a deputation of ten was sent to Lucius Sylla to tell him of the character of this *Sextus Roscius*, and to complain of the wickedness of these confederates, and to beg his interposition on behalf of Sextus' poor son. Then Cicero asks leave to read the decree. Sylla, he is careful to impress upon their lordships, knew nothing of the transaction. The deputation never reaches Sylla. Chrysogonus shuffles, and promises to resign the estate to the son, and Titus promises most faithfully to join in this so fair undertaking. But they delay the performance from day to day, and at last, beginning to feel they were not in possession by a good title, they *enter into a conspiracy against the life of Cicero's client*. But poor young Roscius flies for protection to a lady who had been his father's patroness. She succours and pro-

fects him, and then they have recourse to the guilty device of impeaching him of the murder of his father! They secure a hardened impeacher, and as they knew they could not prove him *actually* guilty they resolve to make him *politically* guilty. They think that the power of Chrysogonus would prevent any man from coming forward to defend him against so foul a charge as parricide; but apparently they did not know the courage of the young advocate named Cicero.

After showing thus the nature and motive of the prosecutors, the learned advocate asks where he shall begin by way of meeting the charge. The answer had better come from himself, for no one can answer like Cicero.

He begins by depicting the unhappy event of the barbarous murder, and says they improve on that wickedness by bribing witnesses to accuse the son, with his own money! He asks what is there that requires to be defended? He will examine the whole matter, so that the Court will have *a clear comprehension of the circumstances upon which the accusation lies, of the points to which he is to speak, and of the manner in which they ought to decide.*

Cicero comes now to the *charge*, the blackest of all crimes, requiring to be *strictly proved beyond even facts*, for it must be shown that his whole life has been one of consummate guilt. This would not and could not be shown in an English Court, as the reader is aware, but the converse could. A good character would be placed by a skilful advocate *immediately after the charge*. What is the charge? Who and what is the prisoner? So that Cicero here, as on all other



occasions, is true to the highest art. He not only shows that the prosecutors can say nothing against his previous character, but he goes on to show everything by way of argument, to be afterwards supported by evidence, in his favour. And it may here be mentioned that it is open to the prosecution in our own day to prove the bad character of the prisoner if his counsel gives evidence of character in his favour.

Cicero, never forgetting that all crime proceeds from motive, places motive in the forefront of his argument for the defence. It must come after character, because if the character be good, there will be the less *probability of there being any motive*. It is its natural place, and Cicero never puts anything out of its order. Here, in arguing that there is no motive, he deals with two improbabilities in their order. First, the improbability that without very strong provocation a son should attempt the life of his father; and, on the other hand, the improbability that a father should hate his son without weighty and indisputable reasons. Both these points are argued upon the basis of the character of father and son, upon the circumstances attending their business and social relations to each other, as well as upon the general practice and habits of society with reference to their mutual dealings; and he does not leave this subject till he has examined it from every point of view and left nothing further to be urged.

It was said by the prosecutors that the father of the accused *intended to disinherit him*, and that caused hatred.

“If so,” asks Cicero, “for what reason? *Did he*

*do it ? What prevented him from doing it ? and did he ever mention such intention ? ”*

A safe question *after* the statement made by the prosecutor. Having shown that the charge of parricide is brought without a suggestion of motive, he says that the prosecution should be abandoned, but for once he will forego his right to demand it, and being so thoroughly satisfied of the innocence of his client, he addresses himself to that part of the case which would come next in order if the least suggestion of motive could have been made.

He now abandons the argument based on motive, and asks *how* the murder was committed ? He not only asks the question, but answers it, and *deals with every possible answer that can be given*. If it is said the accused did it with his own hand the answer is complete, *he was not at Rome at the time*. A good *alibi* can be proved. If it was done by others, were they slaves or free ? Were they of Ameria or of Rome ? If of Ameria let them be produced ; if of Rome how did this country bumpkin know Roman cut-throats ? he who had not been at Rome for years. If he met them to arrange the murder of his father where was the place of meeting ? If he hired them to whom did he pay the money ? where did he get it ? and what was the amount ? These are awkward questions, but they refer to circumstances that usually accompany justice when she is in pursuit of a criminal. And they were the more awkward to answer, inasmuch as the prosecutors had affirmed that *Roscius was a country barbarian, who held no intercourse with the human species, and never set foot within a town*.

Cicero does not readily abandon this line of argu-

ment; it is too precious. Truth woos him with too fascinating a smile of approval, and he proceeds: taking their own description of the country clown, and working upon it with imperturbable pertinacity, he asks, as Roscius was at *Ameria* when his father was murdered at Rome, he *must have written to some assassin there or sent for one!* But this involves the employment of intermediate agents, not one of whom can be traced or *even suggested by the prosecution.*

If not committed by free-men the murder was perpetrated by slaves. But the prosecution will not allow the slaves of the accused to give evidence, which is a good argument in favour of the defence; and, moreover, these slaves are *now in the service of Chrysogonus*, pampered and rewarded by him not to give false evidence against Roscius, which it would be impossible to do with success in the presence of such a cross-examiner as Cicero, but *to suppress that evidence which would have cleared his client.*

Now, then, my lords, having travelled thus far, whom do you suspect? What inferences and suspicions arise from all these arguments? Roscius is reduced to poverty by his father's death, and he is not permitted to inquire into it. The prosecutors, who are known to live by deeds of bloodshed, have possessed themselves of the property of the deceased man.

Now is the time to state an *alibi*; and having thus far refuted the charge he considers it advisable not only to acquit his client, but absolutely to purge his character from the charge *by showing who did it*, or by raising such presumptions of guilt that all the world shall fix it upon his persecutors. He is to

show the murderers, the confederacy and the conspiracy; and he warns the judges, with a touch of exquisite skill, *how many presumptions are necessary to establish a single fact.*

He begins by saying that they can find no motive in *Sextus Roscius*, but that he can find a motive in *Titus*. If so, that is a good foundation on which to build his presumptions. The motive stands out clearly enough—it was plunder. The man who was poor before the murder *becomes rich after*, and rich with the estates of the deceased. Then the prosecutor, who thus gains by the murder, was a man who bore an *inveterate hatred to the deceased man.*

The motives being thus established, he next inquires whether there was in the case of *Titus* that which he proved did not exist, so far as could be seen, in *Sextus*, namely, *opportunity*, and this is shown beyond the shadow of a doubt. He was at Rome when the murder was committed; that is one circumstance, but we need more. Others were at Rome besides *Titus*. But this gentleman was acquainted with bands of assassins who murdered that those who employed them might become possessed of their property.

Next, what did *Titus* do after the murder? He *struggled to become the accuser of Roscius*. It was his friend and dependant who brought the first news of the murder to *Ameria*. Did this messenger and friend do this of his own head? If so, what concern had he in the matter? And why did he go to *Ameria* with the news? And why did he go to *Titus Roscius Capito* first of all, instead of to the unhappy family of the deceased? Then see the expedition with

which this messenger carried the news ! *How did he come to hear of it so soon ? He must have heard of it the moment after it was committed.* And from these facts it follows that both Titus and the messenger *were present at the murder.* Furthermore, the news being taken to this *Capito*, who shared with Titus the plunder, the whole matter is as clear to the minds of the judges as if they had stood by and seen the murder committed.

The subsequent acts of the conspirators are next referred to ; such as sending the news to Chrysogonus, the hurried sale of the estates, and the sharing amongst them of the property. Next, the suppressing of the evidence which the slaves could give, is strong presumption that it would be not only to the advantage of the accused, but to the ruin of the accusers, if they had been permitted to be examined.

Now all this seems very simple indeed. So are nearly all the great works of art when closely examined. Art loves simplicity, and nature abhors complications. It is inartistic Ignorance that muddles, and Pettifoggism that complicates.

I have often heard it said that "Cicero would not do now." I answer, Cicero would have been the greatest advocate of the day, because he was one of the finest speakers, and constructed his defences and his prosecutions on the truest lines. Nor is there, even now, nor has there ever been, any other mode than that adopted by Cicero of properly conducting a case.

Mr. Bagpipes may suit our age better ; but, if so, it has marvellously degenerated in everything that pertains to real oratory and true advocacy. Cicero

was a good speaker, which Bagpipes is not. How, then, can it be said that bad speaking will succeed and good speaking fail? Why will not good speaking do now? But Cicero was also a common-sense advocate, which Bagpipes is not. Why, then, if Bagpipes succeeds should not Cicero? Can it be said that the people are less intelligent than they were in Rome in the days of Cicero? But further, Cicero constructed his cases on the truest lines of advocacy; Bagpipes has no constructive faculty, and does not construct his advocacy at all. His speeches are but a confused torrent of commonplaces, and his cross-examination but a haphazard flinging of questions at a witness, with the bare hope that some one or other may hit something or somebody.

Our tribunal, no doubt, is different from the one Cicero addressed; the law, the political situation, the habits, manners and institutions of the people are all different, but human nature remains unchanged and unchangeable, and so does the true art of appealing to that nature.

Did the reader never perceive an almost perfect likeness between a parent and child? the same expression of face and tone of voice, the same smile upon the lips, the same twinkle of the eye, when the features of the one bore no actual resemblance to the features of the other? If so, he has seen the likeness which exists between the true advocacy of to-day and the advocacy of Cicero.

## THE STORY OF THE TICHBORNE CLAIMANT.

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### ANALYSIS OF MR. HENRY HAWKINS'\* SPEECH FOR THE PROSECUTION IN THE TICHBORNE CASE.

As the object of telling a romantic story differs from that of narrating a series of facts in Court, so the art is different. The interests also are of an opposite nature. The object of the former is to entertain without any regard to your belief, while the latter is to impress your belief without any view to your entertainment, except that an artistic advocate will take care to rivet your attention by the entertaining manner in which he unfolds the incidents of his story ; but he will not amuse you at the expense of his cause, or excite your imagination to the detriment of your judgment. The interest he excites is in the reality of the facts he intends to prove ; the charm of the novelist depends mainly on presenting fiction, so that it resembles reality. The emotions are stirred by imaginary incidents, and at the emotions his art stops. The advocate, on the contrary, if he awakens emotion, does so only the more surely to reach your belief, and when he produces a striking situation it is but for the purpose of impressing its incidents.

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\* Now Sir Henry Hawkins, and one of Her Majesty's Judges of the High Court of Justice.

The novelist and the dramatist strike a situation in order to heighten the entertainment. I do not say that the advocate will not sometimes waylay you with surprise, but when he does so it is still with the object of fixing more certainly your belief.

If these observations be true, it follows that the mode of unfolding a story containing many striking incidents will be different in the two artists. The novelist may commence where he likes, *except at the end*; the advocate will generally commence *before* the beginning of the actual drama; that is to say, he will state the charge, if it be a criminal case, and the nature of the action, if it be a civil cause, before he comes to the incidents of the story.

In the case now before us I have nothing to do with its merits, but only with the merits of the opening speech, and with them only so far as the skill in its construction is concerned. The mechanism of the speech first, and the mode of presenting it next. But what an ample field for criticism stretches out before us as we cross the borders of this amazing case! On every side are incidents innumerable that have to be collected, collated, separated and arranged. It is a wilderness of facts; those in the far distance bearing a near relation to those that are close at hand. Circumstances apparently unconnected have the closest relation to each other; truth and falsehood are intermingled in the wildest confusion; ignorance and imbecility, prejudice and fraud, overlay and smother minute incidents of overwhelming importance, and even twist and distort facts that can neither be hidden nor destroyed.



The panorama of a long series of years has to be brought before the jury. To unfold it with the art of the novelist would be to produce thrilling and extraordinary effects exciting wonder and sympathy; to perform the task with the skill of the advocate, will be to fix the belief of the jury without any regard to their emotions. The former would draw from the reader the exclamation "Wonderful!" The latter must excite the jury at every stage of his progress to say "Impossible!"

The case was opened as simply and as dramatically as anything I have ever listened to; and, reading the statement as I do now after many years, it reproduces in my mind all the excitement and wonder which I so well remember to have experienced when it was delivered.

In the first place it is noteworthy that there need be no waste of words in the exordium of this "momentous case," although the jury are told that "the defendant is charged with a crime as foul as Justice ever raised her sword to strike, and that the public interests demanded the protection of the innocent as well as the punishment of the guilty." That is enough, and then comes "the substance" of all the great mass of facts which will have to be stated.

It is said in few words, and to this effect: In April, 1854, Roger Tichborne, the heir to the Tichborne baronetcy and estates, embarked at Rio on board the "Bella," which was lost, and for eleven long years nothing was known or heard of him. Suddenly, in Australia, a butcher came from the shambles and announced himself as the long lost heir, and in the legal proceedings which were instituted by him for

the recovery of the estates, he swore falsely many things in support of his claim, of which these are the chief:—Of course he swore that he was Roger Tichborne, the son of the lost baronet. In support of the story which he told he also swore that he had, while on a visit to his uncle, seduced his cousin Kate; and, it being suggested to him that he was Arthur Orton, the son of a butcher at Wapping, he swore that he was not. These three things he falsely swore, and those are the three main charges against him.”

“Such is the outline of the fabric of that gigantic fraud which it is my duty to unfold to you, and now I proceed to state the story of the life of Roger Tichborne.”

This is enough to tell the jury as to the charge. Now come three things necessary to clearly define, because identity or non-identity in this case is everything. If this be Roger Tichborne we shall find some likeness to his former self in his *education, character and mind*. We shall also find some knowledge of the incidents of his past life and his connection with bygone and living persons. So, if the jury are acquainted with Roger Tichborne’s early life, they will see whether this man is *likely* to be he—likely, that is all, so far as these details are concerned; probabilities ever asserting their influence, as they always do in true advocacy. The main incidents I shall give because many students will, I am sure, find them interesting as a story as well as instructive as a piece of advocacy, who would never wade through the Tichborne trials in the newspaper reports of the time.

We are told that Roger was, in his earlier years,

educated in France; that he occasionally visited this country; and that his education was continued at Stonyhurst. Then came many details of the early incidents of his life, and as to his habits, manners and pursuits; told, says the learned counsel, in detail, *because they had been denied by the defendant* in his cross-examination, while endeavouring to support his claim to the Tichborne title and estates. Of course, if he is well caught in a good many lies hereabouts, it will go far to shake his character in the eyes of the jury for veracity. It was not omitted to be stated that Roger had been tattooed on the arm, which was to be proved by Lord Bellew; a good point, of course, in an individual's likeness to himself, because, although features change and waists enlarge, tattoo marks remain about the same "through all the changing scenes of life." Roger's good French was mentioned, as also his bad spelling in English, but a kind of spelling, which *would be peculiar to a boy who had spent his early days in a French school*, and by no means likely to be acquired in a butcher's shop at Wapping.

So that there was a pretty good likeness of the outward boy on the mind of the jury so far as his habits, customs and manners were concerned, before the learned counsel proceeded to give a likeness of his character, including his heart and mind.

Roger entered the army and fell in love with his cousin Kate. To show his mind on this subject many letters were read "*to convey to the jury a thorough knowledge of this young man's character and ideas*," his way of thinking and style of writing, because the learned counsel would have to contrast these letters with those of the defendant. Not a bad test of like-

ness or unlikeness this between two minds, if two minds they were. We are next brought to the turning-point of Roger's life—his uncle's discovery of his attachment to his cousin and his disapproval thereof. In consequence of this, on the 12th January, 1852, he left Tichborne Park, where he was then staying, and wrote in melancholy terms of his intention to go abroad for ten or fifteen years. In that month he confided to a Mr. Gosford, in a "sealed packet," his instructions as to certain matters in the event of death.

The jury are asked if it were possible that such an event could be forgotten? They were then enjoined to bear in mind certain letters to Kate which were couched in the strongest terms of affection. In answer to a letter from Lady Doughty he wrote a warm epistle expressing his affection for his cousin. After spending a few days with his relations in town he visited them in Hampshire. Whilst there "he gave his cousin a document dated 22nd June, 1852, the duplicate of which he said he had deposited with Mr. Gosford in the sealed packet. That document Miss Doughty had preserved to this hour and she would produce it to the jury. It was a short statement—only four lines—a *promise to build a chapel at Tichborne if he married his cousin within three years*. And from that hour to the present she has never seen Roger Tichborne. This, I pledge myself to prove to you by overwhelming evidence. Never forget the facts and dates I have now stated; they are of vital importance in this case. Could such facts ever be forgotten by Roger? He went to Tichborne no more; he went to Upton,

near Winchester, in the autumn of 1852, to hunt; sold out of the army January 6th, 1853, and in February went to Paris to take leave of his parents, who were living there; left with his mother a lock of his hair, and returned to England. Leaving Mr. Gosford a power of attorney, on the 25th February he left London for Southampton, accompanied by Gosford, who took leave of him at Winchester. On the 4th March he sailed from Havre for Valparaiso."

Now the wanderings of Roger are traced by the aid of maps in South America. Dates of arrivals at different places, and departures, are given with a view of falsifying dates given by the defendant in the former trial. After making a tour in the interior, Roger returned to Valparaiso, stopping on his way at Lima, where he engaged one Jules Berand, who would be called to give some important evidence. From Jules Berand he purchased certain curiosities, especially a little skeleton which Roger sent over to Gosford, and which would be produced. It was produced at the last trial, and Mr. Hawkins says he shall have to call particular attention to the evidence given on that trial by the defendant concerning this "little skeleton." It may be big evidence, although a small skeleton.

At the end of December Roger was at Santiago making preparations for a tour in the mountains.

While there two daguerreotype portraits were taken, one for his mother and one for Lady Doughty. Of this there could be no doubt, as he refers to them in a letter to Lady Doughty written in February, 1854.

In January he left Santiago for his tour in the mountains. On the 13th February he arrived at

Buenos Ayres. Thence he went to Rio and engaged a passage on board the *Bella* for New York. He had, in the meantime, written many letters to his aunts, Lady Doughty and Mrs. Seymour, and to Gosford. These will be produced, and important evidence, the learned counsel says, they will be, "because they are the evidence of Roger Tichborne himself." *In not one of these letters is Mellipilla mentioned, nor the name of the family of Castro, with whom the defendant swore he spent three weeks. In one of these letters, too, he says he had heard from Lady Doughty of the death of his uncle, the baronet, by which the baronetcy and estates descended to his father, and he himself became next heir.*

Of vast importance, too, says Mr. Hawkins, is the fact that, in one of his letters, he alludes to his "*daily journal*."

Another fact of importance was that, on the death of his uncle, he became entitled, under the settlements, to £1,000 *a-year*; and he wrote home about it, and asked that, "as my income has increased since my uncle's death, pray go to Messrs. Glyn's to exchange the letter of credit for £2,000 for three years for one for £3,000 for the same period." This is considered important, as showing *the intended period of his stay abroad*. It is dated Lima, *September 11th, 1853*, and is addressed to Mrs. Slaughter.

Next come letters from Buenos Ayres and Montevideo in March 1854, in which he says he is "fond of this kind of life," intends to visit other parts of South America and then proceed to New York. On April 1st he wrote his last letter, so far as the prosecutors knew. He then went to Rio, where the

*Bella* lay, bound for New York. Jules Berand saw Roger on board, and would be called as a witness; so would two captains in the merchant service, who also saw him. The ship sailed on the 20th April, 1853, commanded by Captain Birkett. Four days after, the long-boat of the *Bella* was picked up at sea. The ship was never heard of again nor any of the crew.

"All the world," says the learned counsel, "believed that Roger Tichborne was dead. One poor, crazy, misguided soul alone refused to listen to the voice of reason—refused to believe that her first-born son was dead. Gentlemen, I have now finished with the life of Roger Tichborne, and I shall have to ask you whether the man who sits there is the young man whose history I have given you. If he is, then he is wrongly charged in this indictment. If he is not, then he is undoubtedly guilty, for he has sworn that he is the man."

Let it be now remembered that all the story of the Tichborne family and all the material incidents in the life of Roger are before the jury. They know his education, his connections, his constitution, his character, his disposition, even his eccentricities; they know his tender feelings towards, and respect for, the lady he was villainously said to have seduced. They have daguerreotype likenesses of his features; they have more than daguerreotype likenesses of his mind. They know that he was a constant letter writer, and not the man to cease from writing for eleven years if he had been alive; and they know that his letters ceased to come after his disappearance in the *Bella*, where all were lost. They know that he was pretty keen with regard to monetary arrangements, and that

he knew the exact time when he could increase his allowance, and that he was fond of the wandering life of adventure and freedom he was leading.

Here was his portrait then, by a master hand, and I have no hesitation in saying that it could not have been surpassed by human skill. We have him from childhood to youth, from youth to the stripling officer in the Hussars, and onward then a little further till he becomes the adventurous explorer of the South American wilds; thence onward again to his departure in the *Bella*, when we lose sight of him for ever. In all these changes and vicissitudes there is not an instance of his acting contrary to the instincts and breeding of a gentleman. We gather this from the picture of his life, and important it is to remember. We know, also, that he was not a clever, and, far less, a cunning youth, a not unimportant feature of his character to bear in mind. The face may change, but mental capacity is stamped with an unchangeable quality; it may brighten or tarnish, but it never loses its characteristics.

With this portrait closes the first act of this wonderful drama.

The next scene is also artistic, and the "arrangement" might be called an arrangement in black and white. Mr. Hawkins likes contrasts. He knows the effect of these on juries, and so he opens the next act in these words:—

"I have now to direct your attention to the life of a very different person—the life of *Arthur Orton*, the son of a respectable butcher at Wapping. If the defendant is the man, then he certainly is guilty, for he has sworn that he is not."



A good, straight way of putting it.

Then the jury are reminded that although he may not be Orton it does not follow that he is Tichborne. But if he be Orton, as is now going to be shown, then, of course, he is guilty of both perjuries.

Arthur Orton lived at 69, High Street, Wapping, with his father, George Orton, who had a numerous family. Arthur was born on the 1st of June, 1834. He was poorly educated, could read and write, and had a little arithmetic. He was afflicted from infancy with St. Vitus' dance; and in 1848 it was suggested he should go to sea with a view to getting rid of this malady. Accordingly, he sailed *viâ* Antwerp for Valparaiso in a ship commanded by Captain Brooke. Captain Brooke was dead, but his widow, since remarried to a Mr. Howell, could be called, and she would say that the defendant, to the best of her belief, was that Arthur Orton.

In November, 1848, Orton was at Valparaiso. In January, 1849, he went there again, having deserted from his ship, and thence to Mellipilla, where he made the acquaintance of a family named *Castro*, who treated him kindly. In February, 1851, he left Chili in the name of Joseph Orton, but *with the seaman's number of Arthur Orton*. He sailed in the *Jesse Miller*, came home, and went to Wapping. He had by this time so increased in bulk that he was called "Fatty Orton." He then paid his addresses to one, *Mary Ann Loader*, the daughter of a lighter-man, who would be a witness—doubtless to say that the defendant is her old lover.

In December, 1852, he sailed on board the *Middleton* for Hobart Town; *James Lewis*, captain; one,

*James Peebles*, boatswain; while one of the seamen was named *Owen David Lewis*. On board the ship he wrote to Miss Loader, which letter was read, and which, with other letters of the defendant, would show *the difference in handwriting and style from those of Roger of the same period*. The spelling was, indeed, remarkable; "writing" is spelt without a "g;" few is written *fue*; "enquiring" is spelt *enquireen*. But this, of course, does not matter if the defendant be not that Arthur Orton; he, in that case not being responsible for the bad orthography of the Wapping Butcher. But if he is shown to have written these letters, the probability is the jury will identify him with that same butcher. Let us follow then his history. He went in the "*Middleton*" as a butcher. In April, 1853, he arrived at Hobart Town, and in that town a family connected with the Ortons was settled. Their name was *Jury*. He took a letter of recommendation to these Jurys, and Mrs. Jury would be called as a witness, not to prove merely that Orton came there, but that this defendant was that Orton; so he will have a double benefit of trial by Jury.

A Mr. Hawkes, of Hobart Town, who bought meat of him would depose to the same fact. He remained there as a butcher till 1855. The jury are asked at this stage to bear in mind that at this time Roger Tichborne was in *South America*. Orton borrowed £14 from Mrs. Jury, and gave a note of hand bearing date 1855. *That, therefore, fixes his exact whereabouts at that time*. Note was due in August, but when August came Arthur was gone.

In the latter part of 1855 or beginning of 1856, Orton was in the service of a *Mr. Johnson, at Newburn*

*Park, Gippsland, Australia.* In 1856 he was in the service of a *Mr. Foster*, where he remained till March, 1868. In that month he was at Dargo, which is proved by a document dated Dargo, *March 11th, 1868.* Orton remained here between one and two years; a *Mr. Hopwood* would prove this fact, for he saw him at a place called *Sale*, where he was engaged breaking horses, and this witness also will prove that he saw the same Orton in 1863 at *Wagga-Wagga*. He was in the service of a *Mr. Higgins* there, and this evidence is corroborated by *the defendant himself, who had admitted that he was in the service of Mr. Higgins in 1865*; so here is truly a matter of great importance! The man the learned counsel has been tracing all along as Arthur Orton turns out in 1865 to be Roger Tichborne! Could there possibly have been a transmigration of Roger's soul? Now, Hopwood, who had known this same defendant as Arthur Orton, and esteemed him as "his old friend," met him one day in Wagga-Wagga in Higgins' shop, and went in and spoke to him, calling him by his old name. Alas! the mutability of human names!

"I am not Orton," says the defendant, "I am *Castro*. Come and have a drink."

But whether Orton or Castro *he remembered Hopwood*. They drank; they talked of old times; Castro asked after *old friends*, and as they got more chatty, Castro tells his friend why he had changed his name—"there was a warrant out against him about some horses."

"Now," says the learned counsel, "*Hopwood* will tell you that *the man there is the same man he had known in Gippsland, at Dargo, at Boisland, and at Sale.*"

And in addition to this, another witness would prove he saw defendant at work as a butcher in Mr. Higgins' shop. On the 20th of January, 1865, this Castro was married to a *Mary Ann Bryant*, describing himself as born in Chili, and giving his age as thirty years—same age as Arthur's. After his marriage he lived at Wagga-Wagga in a state of abject poverty, and became at last acquainted with one, *Gibbes*, an attorney—a great comfort, no doubt, to one in abject poverty, and better to know than a constable with a warrant 'about some horses' one would think. Now comes an apparent break in the story; but a break by no means, for it becomes the key to all the future conduct of this Castro. 'Poor Lady Tichborne,' says the learned counsel, 'alone of all the world, clung to the belief that her son was not really dead.' No tidings had been heard of the *Bella*, no news of the vessel or the crew, but still she clung to that belief. She was, moreover, not on good terms with the Tichborne family, and was not satisfied with the settlements. She had been left out in the cold, with no provision beyond her marriage settlement. Her income was limited. 'Now,' says the learned counsel, 'such a person would be a ready tool to an impostor, supposing her own reason to be blinded by her feelings and her delusions.' "

A very good and striking way of putting it. No one could do it better than that, Cicero or no Cicero.

"Still, during her husband's life she took no active steps in the matter; but in 1862 her husband died. The voice of the only person who could influence or console her was thus silenced, and she at once set to work advertising for her son. In 1863 she advertised

in the *Times* and in the Australian papers, and in that year the death of her husband, James Tichborne, was announced in the "*Home News*" in Australia. But it is not easy to ascertain the exact time when it first occurred to anyone that this slaughter-man should set up this monstrous claim to the Tichborne title and estates." But this is clear that *it was after the advertisement* and the announcement of the death of the last baronet—an important point, which the jury note. Here springs a huge mountain range of probabilities!

This Castro had a Hampshire acquaintance who knew something of the Tichborne family. In 1865, however, he knew little of the Tichborne title or estates. Further information, therefore, would be necessary before setting up the claim, and one other matter was worth enquiring into before taking such a step: It was desirable to find out what had become of the Orton family at Wapping. It would not do to write to Wapping in his own name or in his own hand, so he went to a schoolmaster and got him to write for him in the name of *Castro*. The reader will remember that Roger never knew Castro.

Here the learned counsel uses a strong argument in the shape of an important question or two, which will require a deal of answering, "Why on earth should he have done that? Above all, *why should Roger Tichborne write in his own name or anyone else's name to enquire after the Ortons at Wapping?* Roger, who never was at Wapping in his life, and never heard of the Ortons! Yet this man wrote in a feigned name and in another person's hand, and as a stranger, to one, *Richardson, at Wapping*, to enquire

after the Orton family. *How should he have known Richardson?*”—another important question, giving birth to a whole family of inferences,

The letter was as follows:—

“Wagga-Wagga, April 13th, 1865.

“Mr. James Richardson.

“SIR.—Although a perfect stranger, I take the liberty of addressing you, and as my residence at present is in this distant Colony, I trust you will pardon the intrusion and oblige me by granting the favour I seek. I believe there was, some years ago, living in your neighbourhood a person named Orton. To this man I wrote several letters, none of which have ever been answered. The letters are of importance to Orton or his family, and to no other, so that I must conclude he has not received them, or I am certain they would be answered; besides as this district is, or lately was, in a very disturbed state, through a lawless set, who styled themselves Bushrangers, and who respected neither life nor property, I concluded my letters perhaps fell into their hands. If Orton or his family live near you still, or if you have or can give any information respecting them, I shall for ever feel grateful. I beg to say here with pleasure that one of the most notorious of the Bushrangers has fallen by a rifleball, and that on the news of his death and doings being properly chronicled, I will send you the paper containing such.

“I trust you will not fail to oblige me by sending any information whatever respecting Orton or *his son Arthur*.

I am, Sir, your obedient and obliged servant,”

THOMAS CASTRO.”

This letter, defendant admitted, was written by his dictation, and was produced. This was shortly before the claim was set up.

"So much for the origin of this most monstrous fraud," says the counsel. There was no reply to the letter. An important fact to state when the subsequent conduct of the defendant is considered.

Then comes another curious step taken by the defendant. For eleven years no letter had been received from Roger Tichborne; but in April, 1865, defendant begins to write the initials R. T. accompanied with a certain sign or heiroglyphic which *Orton always used* but which *Roger had never used*. Then there was a pocket-book in which was written: "Some men has plenty brains and no money; some has plenty money and no brains. Surely the men as has plenty money and no brains are made for the men as has plenty brains and no money."

"These are the sentiments," says the counsel ironically, "of R. C. Tichborne, Bart." "Then," says the document, "Rodger C. Tichborne, some day, I hope." "But Roger Tichborne never spelt his name with a 'D.'" Another entry was, "I Thomas Castro do certify that them as thinks that is my name don't no nothink about it." Then there was the name and address of "*Mary Ann Loader, Russell's Buildings, Wapping.*"

"How," asks Mr. Hawkins, "could Roger Tichborne have *her name* and address in his pocket-book?"

Then we have another important matter. At Sydney was one *Cubitt*, who kept a "missing friends' office" and issued advertisements. Lady Tichborne

saw them and wrote to Cubitt. In this letter she plays into the hands of Castro by giving certain items of information concerning her son and her family. She asks Cubitt to make enquiries concerning Roger, gives his age as 32, says he embarked at Rio on the 20th April, and had not been heard of since; affirms that part of the crew were saved—gives the name of the lost vessel—thinks her son may have married and changed his name, and asks that enquiries should be made. Advertisement accordingly issued. Orton at this time being in Wagga-Wagga.

While Gibbes the Attorney was engaged in taking Castro through the Insolvent Court, he suddenly exclaims "I've spotted you; you are Roger Tichborne; you are advertised for, and if you don't disclose yourself, I shall."

He had seen the initials, it appears, "R. C. T." cut on a tobacco-pipe, and this led to the remarkable discovery. What could poor insolvent Castro do, being thus suddenly found out to be a baronet in disguise, and heir to thousands a year? Of course Gibbes would denounce him to the world.

This story, be it remembered, of Gibbes' discovery, was told by the defendant himself. Gibbes then writes to Cubitt, and a correspondence takes place between that gentleman and Lady Tichborne. *She gives more information*, but says she cannot send £400 until her son's identity is proved. Then she tells him to remember that Roger was three years at the Jesuit College at Stonyhurst, and when he was nineteen years of age went into the Dragoon Guards, where he remained nearly two years: that he passed his



examination well before he got into that regiment—that he never knew his grandfather—Sir James's father having died before she married. Roger was born in Paris, she continues, and spoke French better than English, she believed; and then she says, poor deluded creature, "I enter into all these details that you may be able to know him," and she repeats that she cannot send any money until he has been identified, and that must be in England.

Here is the twilight of Castro's dawning knowledge of Roger's early life. What a feeble glimmer for ingenious fraud to work by! But even ingenious fraud requires time, so the unfortunate baronet wanders about (not able to get any money till he is identified) until *January* 1866, and then he writes his first letter to his anxious mother. The letter is worth reading.

"Wagga-Wagga, Jan. 17th, '66.

"My dear mother. The delay which has taken place since my last letter, dated 22nd April, '54" (He has got this date from her foolish letter telling Cubitt the *Bella* sailed on the 20th), "makes it very difficult to commence this Letter. I deeply regret the trouble and anxiety I must have caused you by not writing before; but they are known to my attorney, and the more private details I will keep for your own Ear. Of one thing rest Assured, that although I have been in a humble condition of Life I have never let any act disgrace you or my Family." (He forgets the change of name in consequence of the warrant about the horses.) "I have been A poor man and nothing worse. Mr. Gibbes suggest to me as essential that I should recall to your

memory things which can only be known to you and me to convince you of my Identity. I don't think it needful, My Dear Mother, although I send them Manely the Brown Mark on my side and the card-case at Brighton. I can assure you, My Dear Mother, I have kept your promise ever since. In writing to me please enclose your letter to Mr. Gibbes, to prevent unnecessary enquiry, as I don't wish any person to know me in this Country when I take my proper position and title. Having, therefore, made up my mind to return and face the Sea once more, I must request to send me the means of doing so and paying a few outstanding debts. I would return by the Overland Mail. The passage Money and other expenses would be over Two Hundred pound, for I propose sailing from Victoria, not this Colony, and to sail from Melbourne in my own name. Now, to annable me to do this, my dear mother, you must send me——” The remainder of the letter was missing.

This letter came into the defendant's possession after Lady Tichborne's death, and was filed by him in Chancery.

“Now,” asks the counsel, “what resemblance was there in this letter to the letters of Roger Tichborne?” A good question to ask in argument as to probability, and destroys an alleged fact. Then, he says, Roger Tichborne never had a brown mark on his side; his mother herself said so; and *she had no knowledge of any card-case at Brighton*; and she admonished him that the less he said about those matters the better. He took her advice, and never mentioned them again till he was cross-examined.

"How was it," asks Mr. Hawkins, "that he did not allude to any of the early incidents of his life?"

How, indeed, since he could have satisfied her of his identity by a hundred of them had he been her very son. Castro, in the meantime, mentions to several persons that he had St. Vitus's dance. This, Tichborne never had in his life, but we know Orton had that disease. He said he was educated at Winchester, and that he was only in the army thirteen days, and was then "bought off."

But *before Lady Tichborne received the letter she actually wrote to him and acknowledged him as her "dearest son Roger" without a single particle of evidence of any kind.* No wonder he began to believe in himself. She writes again and again, giving "scraps of information which were made the most of, and, among other things, mentioned that one *Bogle* was at Sydney." Bogle had been an old servant in the Tichborne family. Before leaving Wagga-Wagga Castro made his will, and that will has an important bearing upon the question as to whether he was Orton or Tichborne. He mentions his mother's name as *Hannah Frances*, when, in fact, it was *Henrietta Félicité*. It left property at *Cowes*, where no Tichborne property was, and at *Hermitage, Dorsetshire*. There was no such place; but there was a farm called *Hermitage* in *Surrey*, which had been acquired *after Roger left England*. There was mention of estates at *Ryde*, where no Tichborne estates existed. The executors were *John Jones, of Bidford, an old friend of George Orton*, and *Lady Hannah Frances Tichborne, "my mother," and Sir John Bird, of Herts, Bart., an imaginary baronet.*

The defendant went to Sydney and saw Bogle, who gave him information on many points. He got from him the *Tichborne Crest*, and he found the English Baronetage. In the will no mention was made of *Upton*, and he said he made the will *purposely to deceive* the bankers to whom he applied for money. He told them he was in the *66th Regiment Light Dragoons (Blues)*.

Next comes a letter from Lady Tichborne, telling him that he and his family were *Roman Catholics*, which rather surprised him, for having forgotten he was a Catholic, he had been married in a Wesleyan Chapel. This mistake, however, he immediately corrects, and, as a true Catholic, gets re-married in a *Roman Catholic Church* in the name of Titchborne, which he spelt with *two t's* instead of one. In answer to his mother's letter containing the information that he is a Catholic, he writes to his "dearest mamma, and *may the blessed Maria have mercy on your soul,*" telling her he is *grieved she did not know his handwriting*.

Not long after this he came home, and "on Christmas Day, 1866, Arthur Orton once more set foot on familiar soil. If Roger Tichborne had arrived, "continues Mr. Hawkins, "surely he would have eagerly sought his friends and relations; the Seymours, the Radcliffes, his executor Gosford, and many other familiar friends. But Arthur Orton knew none of them. There was only one home he was familiar with, and that was in *High-street, Wapping*. There he hurried, and knocked at No. 69."

"Whose house was that?" asks Mr. Justice Lush, by no means intending any dramatic surprise.

But the answer came with thrilling and sensational effect :

“The house of the late *old George Orton*, my lord !”

That was truly a memorable knock ! “Old George was dead. He had left two daughters—a Mrs. Jury and a Mrs. Tredgett, and Arthur Orton went to make enquiries after them at a little public-house called the *Globe*. The burly stranger asked after the old inhabitants, and at last after the Ortons. He was told the daughters were married and gone away, and that the father was dead ; and then, suddenly, the landlady exclaims, ‘*Why, bless me, you are rather like an Orton yourself !*’ ‘Oh, no, I am not an Orton,’ he said, ‘but I am a friend of the family.’ ‘*You seem to know all about the people here,*’ she replied. ‘Ah,’ he said, ‘I have not been here for fifteen years,’ which was true, for that was about the time Arthur Orton went away. Next day, very early in the morning, this illustrious baronet was down at Wapping again, making further enquiries after Arthur Orton’s sisters. It has to be ascertained by him whether they will recognise in him their long-lost brother, Arthur Orton. If they do not, well and good ; but if they do, the voice of affection must, if possible, be silenced.”

At this point in the history of the case another change occurs, which shows again the mutability of human affairs. He is no longer Castro ; he is no longer Tichborne : he plays many parts, and now comes on as one *Stephens*, a man he had met on board ship on his homeward voyage. He finds out the residence of a *Mrs. Pardon*, the sister of the husband of

Mrs. Jury. After sending up his card, on which he had written "Australia," Mrs. Pardon came to him, and in answer to his enquiries for the sisters, said, '*Why you look like an Orton yourself.*' 'No,' said he, 'I am not one of the Ortons, but I am a very great friend of Mrs. Tredgett's brother.' He gave her a letter for Mrs. Tredgett. The letter is sent in, and Mrs. Tredgett appears. The letter was as follows:—

"Wagga-Wagga, N.S.W., June 3rd, '66.

"MY DEAR AND BELOVED SISTER,—It many year now since I heard from any of you. I have never heard a word from any one I knew since 1854. But my friend Mr. Stephens is about starting for England, and he has promised to find you all out, and write and let me know all about you. I do not intend to say much, because he can tell you all about me. Hoping my dear sister will make him welcome, has he is a dear friend of mine, so good-bye,

ARTHUR ORTON."

): (.  
M"

It ends with the same dots and a letter *as in his letters to Mary Ann Loader*. Stephens had never seen the man until he was on board the ship."

On the 26th December he writes again, and asks for further information concerning the Ortons and *Miss Loader*, saying also that she will hear something to her advantage. The address was *Post Office, Gravesend*. The sister believed him to be Orton, and had asked for his portrait; so in a feigned hand he writes on the 7th January, 1867, and says:—

"DEAR MADAM—I received your kind letter this

morning, and very sorry to think you should be so much mistaken *as to think I am your brother*. Your brother is a very great friend of mine, and whom I regard has a brother. And I have likewise promised to send him all the information I can about his family. I cannot call on you at present, but will do so before long. I sent your sisters a likeness of your brother's wife and child this morning. I should have sent you one, but I have only one left, which I require for copying. I have likewise one of himself, which I intend to get some copy of. I will then send you some of each. My future address will be R. C. T., Post-office, Liverpool. Hoping to have the pleasure of making the acquaintance of my friend's sisters before long.—I remain, yours respectfully,

W. H. STEPHENS."

Having written these letters, the defendant "*subsequently denounced them as forgeries, and then in the witness-box was obliged to confess that he had written them*." Besides this, he sent the portraits of *his own wife and child as that of Arthur Orton's wife and child*." An awkward circumstance if he was Tichborne, and Arthur's wife and child were his! The sisters also *recognised the handwriting of Stephens as that of Arthur Orton*. So he writes Arthur's handwriting, and has Arthur's wife and child. He swore that his object in going to Wapping was *to find out about Arthur Orton*, and when he swore this, the letter purporting *to be brought by him from Arthur had not been seen by his solicitor*. There was this further remarkable fact that he concealed these visits to Wapping from his legal advisers. He writes to his friend Rous on the 20th October, 1867 :—

“ We find the other side busy with another pair of sisters for me one of them been to see Mr. Holmes. They had been three days at them, and they are quite sure of success. Only there is this difference, which they cannot make out. The brother of them young womans is very dark, and very much marked with the small-pox very much about the face. But they are still very sure I am him. I wonder who I am to be next? The man they think I am is still living in Wagga-Wagga under an assumed name. They say I was born in Wapping. I am glad they have found out a Respectable part of London for me. I never remember having been there; but Mr. Holmes tell me it a very respectable part of London. R. C. D. TICHBORNE.”

We are then told that the defendant for some time keeps in hiding; “dare not face even the poor old lady herself without some little knowledge of the old place. So he left his wife and children behind and went down to Alresford to look at it. He put “R. C. T.” upon his trunks, no doubt as a suggestion or *invitation to recognition*. If he had been the real man, why did he not go down boldly in his own name and declare himself? Why did he not go to his attorney, or to his father’s, or to his old friend and executor? Instead of this he goes to an obscure public-house, and keeps himself quite concealed. Then he gets hold of the publican, takes him for walks round the Tichborne estate, and gathers from him all the information he can.”

Now, you will observe, the learned counsel has arrived at a point in the case where it is advisable to show the means the defendant employed to obtain



what many persons thought so wonderful, *the knowledge he possessed of the persons and incidents connected with the Tichborne family.*

Lady Tichborne, in her imbecility, was first; Bogle was next; and now comes the publican. It was quite time to obtain the assistance of a solicitor, so he employed Mr. Holmes. Mr. Gosford went to Gravesend to see him, but he refused to be seen. Mr. Gosford went again; saw him, put questions to him, and told him he was not Roger Tichborne. Then the defendant writes to Rous in these terms:—“If my solicitor, Mr. Holmes, writes to you, give him any information you can, and depend upon perfect secrecy between us.”

“Who was Mr. Rous?” asks the counsel. The question is very well placed, and the answer extremely important as clearing much ground in the future. It could not have come at a better time. “*An old clerk of Mr. Hopkins,*” says Mr. Hawkins; “*the old family attorney, acquainted with the family estates.* Rous could give him much information about them, and it was all important to obtain such information before the claimant faced Hopkins himself, as he would have to do. Hence the application to Rous, and hence the hint as to secrecy.”

He then goes with a *brewer's clerk* and his attorney to see Lady Tichborne in Paris.

“Unable,” says Mr. Hawkins, “to relinquish her long cherished idea that her long-lost son was yet alive, she still had received from him such false particulars as might well have raised a doubt in any rational mind. Still, she refused to doubt. He had talked about his grandfather, *whom Roger had never seen.*

He said he was a private, whereas Roger was an officer; that he was educated at Winchester instead of Stonyhurst; that he had had St. Vitus's dance, which Roger never had. '*He confesses everything as if in a dream,*' she wrote; 'but it will not prevent me from recognising him, though his statements differ from mine.' This was the poor bewildered old lady, who was now to be confronted with her long-lost son in the company of two strangers, one of them an attorney! He did not go to see her; she had to come to find him, and she found him *lying on a bed.*" Must have been rather a strong maternal instinct, one would think, to recognise her son through the bedclothes!

This was her meeting with her long-lost son. Then is given the defendant's own account of this affecting interview.

"*I was lying on a bed, and my mother was standing alongside of me. I cannot say who spoke first. We conversed a long time. I cannot say if she recognised me at once or after a time, or what. There were others in the room who will be able to give a better account of it than me—Mr. Holmes and Mr. Leete (the brewer's clerk) and Dr. Shrimpton. I believe we were both affected at the interview. She did not express any doubt about my being her son. Oh, no, not in the slightest.*" Such was this first interview between mother and child. He remained three days in Paris, and then returned to London. Mr. Holmes obtained for him the Tichborne pedigree and the *Army Gazette* containing the dates of Roger's military life, and a copy of the *Tichborne will*, disclosing most important particulars as to his affairs.

Soon after this Gosford met the defendant, and said—"If you are Roger Tichborne, you can't have forgotten the sealed packet deposited with me. What were the contents of it?"

The defendant could not say. The probability, of course, is, that if he had been Roger he could have told at once, and so have convinced Mr. Gosford of his identity. The defendant, in the course of time, we are told, filed an affidavit in Chancery, giving an account of the wreck of the *Bella*, his rescue, and voyage to Australia. But "*his affidavit was a tissue of gross and revolting absurdities.*" That is somewhat stronger than saying it was a tissue of falsehoods, because the absurdities would speak for themselves, so would the falsehoods, but they would have to be disproved, while absurdities would not. Falsehood or not is a matter of belief; absurdity or not is a matter of common sense and sight. In order to prepare himself for cross-examination, the defendant next obtained possession of all the letters of Roger that could be laid hold of.

In the meantime he was corresponding with the Ortons, and giving them money. "Whenever they wanted money," he said, "I sent them some." "Charles Orton, brother of Arthur, was carrying on business as a butcher at *Hermitage Wharf*, Wapping. He, being poor, communicated with the defendant, and from him received letters and money; £5 a week, at first in the name of Tichborne, and then in the name of Brand. This continued up to September, 1868, so that Tichborne in his communications with Charles Orton becomes *Brand*. Rumours arose that he was supporting the Ortons, but he wrote to

Holmes in October, 1868, *distinctly denying that he sent them money. The correspondence was burnt at defendant's instance, and he got Charles to sign a declaration saying he was not his brother.* Here you see blood must have been very strong to require a declaration. But he could never get Charles to swear the denial. In October, 1868, he ceased to make provision for him, and Charles *went to the other side and told them the truth about the matter.* Then the defendant made an affidavit, in which he swore — “I did not know any of Arthur Orton's family until the year 1868, when, in consequence of rumours which reached me, I called upon his sisters, whom I then saw for the first time. *They both made an affidavit that I am no relative of them, and that I am not their brother Arthur, whom they last heard from in a letter dated August last from Western Australia.*”

“Who would imagine from this,” asks the learned counsel, “that he had been long in communication with them; that he had been giving them money; that his *first visit on his arrival in England* (Christmas Eve, 1866) was to enquire after them; and that *for two years he had been in constant communication with them?*”

Who, indeed? Not the jury, one would suppose.

And here ends the third day of Mr. Hawkins' speech. And what a distance he has travelled! what a multitude of facts he has collected and arranged! Not one, so far as I can discover, out of place; not an episode in the whole case but is appropriately inserted. Surely no speech was ever better planned. You may walk over the ground he has traversed and find your way to any point without the slightest difficulty. Do you want Valparaiso? There are

landmarks in the facts he has narrated which will take you direct. Do you want Hobart Town? There are the Jurys, the note of hand and the date, 1855. Do you wish to see him at Gippsland? Mr. Johnson will take you. Dargo? There's a document dated and signed. Sale? Mr. Hopwood knows all about it, and so he does of Wagga-Wagga. Do you wish to see when and wherefore he changes his name to Castro? You'll find out at Mellipilla how he gets the name, and from Hopwood why he changes it. And so, after this opening you may, with the utmost ease, shift scene after scene and see the defendant pursuing his vocations, and even get occasional glimpses of him in the obscurity of the bush, where he wanders like a dark and suspicious figure in the pathless wilderness of unrevealed mysteries:—unrevealed, except by his own inadvertent observations, which shed a momentary glimmer on the scene, and show that he was engaged in business which only those with whom he consorted could divulge. Never was a figure more clearly traceable from point to point and from name to name. And it may fairly be said of him that when he takes the greatest pains to conceal his identity his identity stands most clearly revealed. It is strange that there is no point of contact between these two men. They never even cross each other's path, and there is scarcely a movement of either man in which you can mistake for a single moment the identity of the person. It is as impossible to confound their actions as it is to assimilate their minds and characters.

In the next chapter the learned counsel dwelt upon

that part of the defendant's history which related to Chili.

"My case," he said, "is that Orton left Chili two years before Roger left England. It was necessary for the defendant, while making his claim, to write to Castro in Mellipilla to prepare him for the enquiries that would inevitably be made. So he writes to say that he has got very fat and his relations dispute his identity; tells him he made use of his name in Australia, and never disgraced it in feats of horsemanship."

Commenting on all this, the learned counsel observes: "Orton left England for Chili in the early part of 1851, came back to Wapping, and left at the end of 1852 for Hobart Town. Roger Tichborne did not leave England until February, 1854; so that when the defendant speaks in his letter of being the same person whom Castro knew seventeen years ago, *he overruns himself by at least two or three years.*" That is a point of immense importance, which the jury note.

Now comes a letter which, the learned counsel says, "speaks volumes." It was from the *real Castro*, of *Mellipilla*, in answer to one from the defendant, who had signed his name as Tichborne. As the letter is described as a "crucial test" as to who the defendant really was, it is read and its main point commented on in these words: "See what it conveyed to the mind of the man who received it! 'I have received from you a letter, signed Tichborne; I assume it is your name; but the man who was staying here bore the name of Orton, and described himself as the son of a butcher; but there is nothing in that, and you may

have mistaken the two Spanish words *canciller* and *carnicero* — the one meaning chancellor, the other butcher.”

Next Holmes writes to Castro asking him whether he really knew Orton or whether Barra, the agent of the Tichborne family, had mentioned the name to him first. He says also that *he has clear evidence that Orton is in western Australia*. The answer came that, although the defendant “had borne the names Arthur Orton he had stated they were not his own; that he belonged to the English aristocracy, and that he had played with the Queen’s children.” Presumably, while his father was Chancellor.

*The defendant had repeatedly on oath denied that he had ever passed as Arthur Orton.*

It is next proposed that the defendant should go to Chili to be seen by the people there. He is reluctant, but consents; and, in the meantime to prepare Castro for the interview, Holmes writes and tells him that “his client has *completely gained his suit in the Court of Chancery.*”

Then the defendant writes to Castro, “*I have never passed under the name of Orton, so do not allow my opponents to persuade my friends that I have.*”

Holmes also writes to Castro and says:—“Orton’s brother and sister have seen Sir Roger, and declare he is not Arthur, and that the proceedings are the result of malice.” He also sends a portrait of “*Sir Roger,*” this, of course, being the defendant’s own likeness. So all is arranged for Sir Roger’s departure for Chili to be seen by the Chilean witnesses.

“And now,” says the counsel, “you will see how he met them. There were two commissions for taking

evidence—one in Chili and one in Australia; he got that for Australia postponed, on the ground that he desired to attend the Chili commission. He swore that he was advised to do so—very good advice and very necessary, if the man were really Sir Roger. But the defendant never meant to follow it. He sailed indeed, and arrived at Rio in October, 1868; from Rio he and his companions went to Monte Video, but there they separated, his companions to follow their pre-arranged course by sea to Valparaiso, while he preferred to go by land. It was very necessary for him to do so, for this was a journey Sir Roger had taken and he had not. *He intended to study the route from Rio to Valparaiso*, but had no idea of ever presenting himself there. Conscious that he was Arthur Orton, he took care never to stand face to face with Castro. So he never went to Chili after all. The commission was delayed till December, but he never came. The evidence was taken in his absence, but in the presence of his counsel. From that time the defendant had no communication with Castro or any of his Chilian friends.

Having got thus far with the case; having traced his sinuous course till “the burly stranger knocked at the door of the late George Orton, my lord,” and having shown his suspicious and false dealings since that memorable knock, the learned counsel now takes up evidence which comes in here like the capital on a pillar. His edifice is nearly complete. He is not about to deal with evidence which his own witnesses are to prove, but with that which comes from the mouth of the defendant himself. Evidence not to be contradicted or ex-



plained away, and which will remain for ever as facts fitting in with the case for the prosecution, but by no manner of means capable of finding a resting-place in that of the defendant. This part, therefore, will be complete in itself, and finds its appropriate position in this part of the opening. This evidence consists in certain answers of the defendant in his cross-examination by Sir John Coleridge, contradicting many absolute irrefutable facts, and disclosing such astounding ignorance of the prominent features of Roger's life, that the idle tale will appear utterly unbelievable upon these admissions, even before other evidence in proof of the imposture can be given.

In this cross-examination came the defendant's account of the contents of the "sealed packet" which he foolishly and wickedly connected with *the alleged seduction of his cousin*—"the most foul and detestable perjury ever committed," says Mr. Hawkins. The paper deposited was this:—

"Tichborne Park, *June 22nd*, 1852.

"I make on this day a promise that if I marry my cousin Catherine Doughty this year, before three years are over at the latest, to build a church or chapel at Tichborne to the Holy Virgin, in thanksgiving for the protection which she has thrown over us, and in praying God that our wishes may be fulfilled.

"R. C. TICHBORNE."

In the witness-box the defendant had feigned a reluctance to disclose it. Mr. Hawkins pertinently asks "why?" There had been two copies of this document; one was given to Mr. Gosford and the

other to Miss Doughty. The defendant did not know that one had been given to her, and, finding out that Gosford's was destroyed, and thinking no copy of it could be produced, he, in February, 1868, made an affidavit, in which he says, "that before leaving England in March, 1853, I placed in the hands of Gosford the document, with instructions not to open it except in certain events, one of which I know has not happened and the other I hope has not happened."

The engagement, he it remembered, was broken off between the cousins in 1852. He was asked *what the first event was*. He answered: "My return before my marriage." He was pressed upon the point and then said, "*I dont know ; I think it was my death.*"

He was then asked as to the other. He professed extreme reluctance, but at last said, "*the confinement of my cousin !*" "He was asked solemnly," said Mr. Hawkins, "do you mean this lady sitting beneath me?"

"Yes."

"Do you mean to swear that you seduced this lady?"

He answered, "I most solemnly to my God swear it!"

"When?"

"In *July or August, 1852.*"

In August, 1862, the defendant gave his attorney the following as the document he had deposited with Gosford:—

"In the event of my father being in possession before my return, or dying before my return, he (Gosford) was to act for him according to instruc-

tions contained in the document. In the first place, he was to have Upton to live at and there to manage the whole of the estate. He was to keep the farm in hand and show the greatest kindness to my cousin Kate and let her have anything she required. My cousin gave me to understand *she was enciente*, and pressed me very hard to marry her at once. I did not believe such was the case, nor have I since heard it was. I always believe it was said to get me to marry her at once. For this my father tried to persuade me. It also refers to the village at Prior Dene. He (Gosford) was to have the cottages repaired and also to improve the estate in general. Was also to make arrangements for Kate to leave England if that was true. Both Gosford and wife pressed me very hard to marry her at once. I do not think Mrs. Gosford knew about Kate.

“R. C. D. TICHBORNE.”

Pressed at the first trial to give his recollections of it, he wrote the following:—

“If it be true that my cousin Kate D—— should prove to be *enciente* you are to make all necessary arrangements for going to Scotland, and you are to see that Upton is properly prepared for her until I return or she marries. You are to show great kindness to her and let her have everything she requires. If she remains single until I come back I will marry her. In the event of my cousin’s death you are to take charge of the estates on my behalf, to keep the home farm and to repair the cottages at Prior Dene.

“R. C. D. TICHBORNE.”

This incredible story was to be disproved by evidence; not merely by evidence which added to

the improbabilities, but which would prove it to be impossible to be true. And this would be accomplished by means of dates, to which the defendant had been pinned. Then the learned counsel marshalled facts and dates in the history of Roger which *proved the impossibility of the defendant's story being true*. Not only would the story be proved impossible out of the defendant's own mouth, but it would be contradicted by a body of trustworthy evidence which could not be disbelieved. "If this evidence will not satisfy the jury," said the learned counsel, "I declare to God I do not know what evidence would be required, or by what evidence a lady of honour and character could vindicate her virtue against a foul aspersion."

No wonder the learned counsel rose to this height, seeing the issue which loomed through this dark cloud of lies. It was not merely whether the defendant was Tichborne, but whether a lady, hitherto regarded as a virtuous woman, would be degraded, and perjured in the eyes of the jury, her husband, her children and the world. So, says Mr. Hawkins, not liking to leave this point without thoroughly exhausting everything he could say upon the subject, *he will prove by Roger's letters that he was not at Tichborne at the time or anything near the time when the seduction was alleged to have taken place*. After a certain date, which was long before the time alleged by the defendant, Roger never was at Tichborne again. The sealed packet was given to Gosford in *January, 1852*, while defendant in his affidavit swore it was *November, 1852*.

Next came the incredible story of the wreck, in itself *an impossibility*, as told; and let the reader

bear in mind that no true story can have an impossibility in it—a false story frequently has.

Then came another impossibility. Roger's letters showed that he never could have been at Mellipilla; but Orton undoubtedly was, and his presence there gave birth to the Castro episode. In 1854, Roger sent home two daguerreotypes, and they were in the possession of the Tichborne family; yet the defendant denied that he had ever sent them—a strange and shortsighted denial truly!

Now comes another point relating to the wreck. During all the nineteen years that had elapsed since the loss of the *Bella*, no living being had ever been heard of as having been saved. The ship that, according to the defendant's account, had saved him was the *Themis*, which was changed to the *Osprey*, because, doubtless, he had learned that an *Osprey* had reached Melbourne about the time that would have fitted in with his story. But there are other things required to fit in with such a story before it can be accepted as true, and to these the learned counsel calls the attention of the jury. First the size of the vessel, as stated by the defendant, was as large as the *Bella*—1800 tons—but the *Osprey* that came into Melbourne was a little vessel under 100 tons; it had no passengers and only a small crew, while the defendant's *Osprey* had a crew of ten men. He was asked the names of the captain and the crew, but he could not give one. He was pressed in cross-examination, with this remarkable result, that he gave the names of J. Lewis, J. Peebles and Owen David Lewis, which, strange to say, *were the names of the men on board the Middleton—Orton's*

*vessel in 1852!* What a poor uninventive mind ! And yet what a remarkable memory he must have had ! On reaching Melbourne he said he gave the captain a cheque, which had reached home and been acknowledged by his relatives as genuine, but had been dishonoured. This was all self-evidently untrue, and required no reasoning upon whatever, but it was as well to give the defendant's own version, which was as follows :—

“ Mr. Hopkins told me that during my absence a cheque came to Glyn, and that the money had been taken from Glyn's previously. The cheque was sent to Hampshire, and Mr. Hopkins got it. *He told me* it was between £17 and £18. He sent it to Mr. Greenwood, who acknowledged it was mine, but it was dishonoured.”

It was necessary for him to dishonour it, otherwise the bankers' books would have been in his way. But the counsel deals with it in one argument : “ This was all a fabrication and an absurd fabrication, for, of course, had any such cheque really arrived, it would have shown that he was alive.”

Moreover, the log-book of the *Osprey* contained no account of the picking up of a shipwrecked passenger, or any reference in any way to such an incident of her voyage as he described. But the defendant had tried to meet this impossibility by another—he said it was *another Osprey*, and then he said it must have been the *Themis*; but he further swore that *eight sailors were saved with him*. Not one of these had ever been heard of.

It was thought proper to give the jury the key to the story of the £17 or £18 cheque, and it was this :

the defendant had heard that the *Themis* had picked up a shipwrecked man at sea, so this poor shipwrecked Claimant, driven to his wit's end, and eager to catch at any straw, goes down to Liverpool to see the owner, and is so elated with his success that he writes:—

“*It is now beyond a doubt it was the ‘Themis’ picked me up.* The owners and agents are doing all they can to find me evidence.”

So the log-book is entrusted to one of the defendant's agents, but, strange to say, there was no trace in it of any shipwrecked passenger having been saved. It was, however, discovered that a ship called the *Themis* had taken a second-class passenger to Melbourne, who had disappeared after giving the captain a cheque for £17 or £18. This was the origin of the story of the cheque. But in a short time “the mate of the *Themis* turned up, and declared it was all wrong, and then the *Themis* was dropped, and the *Osprey* taken up again.”

As to the life in Australia, the defendant admitted that he had changed his name to *Morgan*, but declined to say why, on the ground that it *might tend to criminate him*; that he knew Arthur Orton, who had changed his name to Alfred Smith, because “he had done something not in accordance with law.” “He admitted that his friend was charged with bushranging, which meant highway robbery; and on being asked if he was charged with Orton for that offence, he declined to say. He admitted his intimacy with Morgan, a bushranger, shot in 1865, and his intimacy with another bushranger named Tote. He was also charged in the name of Orton with

*horse stealing. This he admitted. "What more," asks the learned counsel, "need I say?"*

Just one or two words, perhaps. Upon Roger there were tattoo marks not found upon this man, and upon this man there were fabricated marks, which never had existed on Roger. All the different physical peculiarities were referred to which existed in Roger, and which did not exist in the defendant; so that, according to the description, no two men could be more dissimilar with regard to unchanging signs of identity; one important sign being that the ears of Roger adhered closely to his cheeks, while this man had pendant lobes. So having contrasted the two men's personal peculiarities, as he had contrasted their histories, manners, characters, sentiments, education and minds, he concludes with a peroration useful to the student as a study of the arrangement of a case. His last observation was as to handwriting, which he said could not deceive. The defendant's writing and spelling were writing and spelling exactly resembling Arthur Orton's, but totally dissimilar to the writing and spelling of Roger Tichborne.

It was true that he had endeavoured to imitate Roger's writing after he had come to England, and after he had written to the dowager, saying—"*I hope you have got some of the letters;*" but that would not affect the judgment of the jury in any way, except by showing that the apparent resemblance of these later letters was the result of imitation. He then concludes :—

"Gentlemen, I have shown you the life, habits, education, the correspondence, the sentiments, the



dealings of Roger Charles Tichborne, whom the defendant is charged with fraudulently attempting to personate. I have shown you also the life, habits, education, correspondence, conduct and career of Arthur Orton, whom we allege this man to be. No two persons could be possibly more unlike each other. I have also called your attention to the various accounts given by the defendant of his past life and career. How he would have you to believe that this high-born English gentleman, who had rank and fortune at his command, descended so low as to forget every tie of duty and sacred affection towards those to whom he owed both; how, with birth and education, which would have enabled him to move in the highest station of society, he chose to associate with slaughtermen, highwaymen and thieves; how, from a man of honour and truth, he condescended to become a trickster and a knave; how, with audacity unparalleled for his own ends, and to cover his ignorance of the one tender secret of the man whose name he had assumed, he did not hesitate to impute to him the baseness, ingratitude and cruelty of assailing the honour of an English lady. I have shown you, moreover, how the defendant would have you believe that, with a memory said to be so marvellous as to enable him to relate with accuracy the most puerile trifles, he has nevertheless forgotten his own mother tongue, and has become oblivious of events which, once known, could never have been effaced from the memory of the man who had witnessed them. I have called your attention to the mass of living testimony which I propose to offer to you. I shall lay before you also

the evidence of the dead. In December last the late Lady Doughty, with intellect unclouded, closed her eyes in death. She ended her days in peace, and ere she died, in the hour of her death, and with the consciousness that in a few short moments she would enter into the presence of her God, to whom she swore, she recorded her oath that the defendant was not the man he had falsely sworn himself to be. With such testimony, added to those inferences which I invite you to draw, as reasoning men, from matters to which I have called your attention, I believe I shall abundantly satisfy you that the defendant is not Roger Charles Tichborne, as he has falsely sworn himself to be, and that he is Arthur Orton, whom I allege him to be; and, lastly, that in this foul aspersion which he has made on the character and reputation of the lady whose name has been so often mentioned, he committed perjury the most daring and detestable.

## THE CROSS-EXAMINATION OF "OLD BOGLE."

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MANY readers, when they see the heading of this page, will wonder who "Old Bogle" was. Very few persons comparatively have read the Tichborne case, or know the Tichborne story. They will think probably it means the "old gentleman" himself. If it did, I believe Mr. Hawkins could have effectively cross-examined him. But if the thoughtful reader has perused the analysis of the opening speech in the prosecution of Orton he will know that Old Bogle was an old black servant of the Tichborne family; that he was at Sydney at the time Castro commenced to make his claim to the estates; and that Roger's mother, "the poor deluded creature," had written and told Castro that fact. It was from Bogle the Claimant obtained almost his earliest information of the family of the Tichbornes.

The cross-examination of this witness is interesting from many points of view. It affords specimens of artistic workmanship and of variations of style employed for the purpose of producing different effects, but always with the view of minimising his evidence or discrediting it by eliciting contradictions. I shall give only two illustra-

tions, opposite in their character and widely different in their objects; the purpose of the one being to lay before the jury the sources from whence the alleged impostor obtained the knowledge which he undoubtedly possessed of many incidents in the Tichborne family; the design of the other being to break down the witness on the ground of his unreliability, and especially when speaking to the identity of the Claimant, and the circumstances attending the earlier years of Roger's life. The reader will see how humour and ridicule may sometimes be made to play an important part in cross-examination. The following is the general nature of the evidence the cross-examination was directed to elicit:—

1. That Bogle and his son had been ever since their return to England *dependents on the Claimant for support*; that they had shared his home and lived upon his hospitality; and therefore the natural inference would be at the outset that Old Bogle was a zealous and prejudiced partisan.

2. Bogle's intimate knowledge of the Tichborne family and its history; his acquaintance with innumerable details of the life and character of Roger; his recollection of the minor incidents of Roger's childhood and boyhood up to the period of his leaving England on his ill-fated expedition.

3. His intimate knowledge of the situation and character of the Tichborne estates; of Upton; of the rooms in Tichborne House, their furniture and pictures; of the names of Roger's nurses and the neighbours with whom he had been acquainted; even the trivial and minuter details were to be shown as

within his powerful recollection, such as the kind of frocks the child wore, and the childish frolics he used to indulge in.

All this would be of immense importance, as the reader will see, as so much stock-in-trade to a man who was about to set himself up in the business of personating that child grown into manhood. It had been said over and over again by persons who had not read the case, and their name was legion, “This must be the right man, or *how could he have known all these things.*”

This is precisely what Mr. Hawkins’s cross-examination is about to be directed to—namely, *to show that the Claimant’s knowledge was the knowledge of Old Bogle, and not his own in reality*; and if I mistake not, it will show that the pretended recollection of the Claimant is *not the recollection of a child grown into a man, but of one who was a man when the incidents occurred!* The claimant, as I read the evidence, *knew somewhat more than he would have recollected if he had been the real Roger.* He recollected with the crammed mind of a man and not with the artless memory of a child. Hence we have another category of objects to which the cross-examination was directed. It was this:—

Godwin’s Farm and its occupants.

Old Etheridge, the blacksmith of Upton.

The Nobles, who kept the “Dairy Farm.”

Mr. Baigent, who called himself “a connection of the Tichborne family,” and came to clean the pictures—to wash, in fact, the faces of remote ancestors.

Mr. Hopkins, the family lawyer.

Mr. Slaughter, and many others.

All these had doubtless been known to the boy, but they were far better known to Old Bogle, and his recollection of them would be keener than that of the real man, who knew them only as a child. Just imagine for a moment a clever cunning man like the Claimant gathering materials from so boundless a store as this, and can you wonder that he should show a surprising knowledge of some incidents in Roger's early life?

Then came another group of things which Bogle was asked about and gave information upon, showing again the acquired knowledge of the man, and that of the most minute and circumstantial kind, such as no grown-up child would recollect.

Miss Doughty's bay mare, Roger's dog "*Spring*," Powell, who taught Roger the French horn, and the visits of Lady Tichborne to the family seat. Bogle also knew the Nangles, Walter Strickland, a friend of Roger's, Tom Muston, the groom; Moore, a servant; Carter, another servant, and McCann. He had also heard of Clarke, Roger's servant in Ireland, having been killed—a most important fact for Roger to remember, even if he had forgotten the name of the man who had given him a lesson or two on the French horn, or had forgotten the name of one of the grooms, or those of the other servants, with whom he would not be familiar, although Bogle would. So it was a good thing in the cross-examination that Old Bogle let slip the fact that *he had heard all about Roger's servant having been killed*. And let the reader note where it comes in—all in the midst of a lot of unimportant matters of detail which are poured upon him like corn out of a sack. Poor Old Bogle! He

didn't think he was doing any harm. Even the French horn did not seem to him an instrument out of which anything could be made to turn against the Claimant; “because,” thought Bogle, “Roger ought to recollect about the French horn, he couldn't forget it,” although it was mixed up in cross-examination with such a variety of small matters as tended to show *whose* memory it was—Bogle's or the boy's.

Thus the cross-examination was directed to the sources from whence the Claimant obtained the information which he so adroitly used to prove he was the heir to the estates.

The next point in the cross-examination was to show that after Bogle left England and took up his residence in Australia, his two sons followed in the course of two or three years, *bringing with them information up to date.*

It was one of these two sons, Andrew, who, as the cross-examination shows, gave the witness a piece of paper. This paper showed clearly enough that when Old Bogle went to the hotel where the Claimant was staying in Australia he *went to greet Sir Roger rather than to ascertain whether or no it was he.* He went “possessed with the idea” that the person he was to meet was in fact the veritable Roger; and then one of two things must follow—if he went as a rogue to assist in the perpetration of a fraud, he would willingly communicate all he knew of the family and estates, and if he went as a fool he could easily be drawn by a cunning impostor to impart the same information.

Then we get the cross-examination as to Bogle's first interview with the Claimant, and a very interest-

ing cross-examination it is from an advocate's point of view.

"You knew the defendant at once?" asks Mr. Hawkins.

"Yes," answers Bogle.

"He was exactly like?"

"Yes; I knew him from his likeness to his uncle."

"And that was how you recognised him?"

"Yes."

"At first sight?"

"At first sight."

"Not from his likeness to Roger?"

"Not exactly."

"There's a good deal of difference between him and Roger, is there not?"

This question was a sort of petard, and Bogle, having been got ready by the previous questions, must be hoisted upon it, struggle as he may; he struggles thus:

"He is stouter, says Bogle.

"A great deal stouter?" repeats Mr. Hawkins.

"No; not a great deal."

"What, was Roger stout?"—The "what" startles Bogle.

"No."

"Was he thin?"

"Yes."

"Very thin?"

"Yes."

"Narrow-chested; pigeon-breasted?"

"They say so; but I didn't think he was by measurement."



“Don’t talk of measurement. Was he not narrow in the front part of the chest?”

“He appeared so.”

“Did you think the defendant narrow and pigeon-breasted?”

“No; he was stouter.”

“And broader?”

“Yes.”

“Taller?”

“No; about the same height.”

“Had Roger a long neck?”

“Well, I don’t know if longer than usual. As he was thin it appeared to be so.”

“The defendant’s did not appear so? did it?”

“It appeared stouter because he was stout.”

“As to the face?”

“The upper part was like Roger’s.”

“What do you say to the lower part?”

“Well, his nose was injured.”

“But the lower part—the chin?”

“*It was shorter.*”

“Roger’s was long?”

“Rather.”

“And pointed?”

“*Yes, I think so.*”

Now a direct point-blank contradiction of what the defendant had sworn in the former trial is obtained in this way:

“Do you know whether he had heard you were in Sydney?”

“He had seen Guilfoyle (the old family gardener). I don’t know whether Guilfoyle had told him anything. (The dowager’s letters to the defendant had

mentioned that Bogle was in Sydney, and was quite black).

"Did he tell you he knew you were in Sydney?"

"Yes he did."

"Did he show you a letter of Lady Tichborne?"

"He did."

"Did he ask you if you knew her handwriting?"

"Yes, he did."

"Did he put the letter into your hand?"

"Yes, he did."

"Did you read it?"

"I couldn't, as I had not got my glasses."

"Did he ask you if you knew the handwriting?"

"Yes, he did; and he told me his mother had written and told him I was there."

"Did he say he had been making enquiries about you?"

"He said he was going to advertise for me."

The course thus clear, the cross-examination of the defendant is now referred to, and that portion of it read where the defendant swore that *the name of Bogle never had been mentioned to him until he saw him.*

"But you knew at the time that Bogle was there?"

"*I did not,*" swore the defendant in his previous examination.

"Had not you received your mother's letter?"

"No, not at that time."

We have then up to this point, upon the facts, Bogle's absolute contradiction of himself with reference to his recognition of the Claimant, and his direct contradiction of the Claimant with regard to

Lady Tichborne's letter, which had informed him that Bogle was in Sydney.

I will now give another example from the cross-examination of this witness. It refers to the important subject of the tattoo marks which were proved to have been upon Roger's arms before he left England. As the defendant had no such marks, Bogle swore that if Roger had ever had such a thing he, Bogle, *must have seen them*, for *Bogle had been with Roger on three occasions, and had seen Roger's arms bare, and no tattoo mark was there*. Positive point-blank swearing this, dealt with in the following manner :—

“ You say,” asks Mr. Hawkins, that “ on each of these occasions Roger had on a pair of black trousers, with his braces tied round his waist ? ”

“ Yes.”

“ Was the night shirt buttoned up to the throat ? ”

“ Yes.”

“ The sleeves, how were they ? ”

“ Loose.”

“ Well ? ”

“ Well,” says Bogle.

“ What then ? What did you see ? ”

“ I saw him rub his arm.”

“ Simply rubbing his arm, like this ? ”

“ He just rubbed one arm and then the other.”

“ Both at the same time ? ”

“ No, not both at the same time ; first one and then the other.”

“ Do you know why he rubbed his arm ? ”

“ I suppose it itched ! I don't know.”

“ But what did you think when you saw him rubbing his arm ? ”

"I thought he'd got a flea," says the innocent Bogle, little dreaming how big a flea that was.

"A flea!" says Mr. Hawkins, amid immense laughter.

"Yes, I thought so."

"Did you see it?"

"No, of course not, Mr. Hawkins."

"Whereabouts was it? Just show me?"

Bogle points out the place, just about two inches above the elbow.

"Can you tell me what time this was?"

"About ten minutes past eleven," says Bogle.

"That's the first occasion."

"Yes; but it occurred three times, I've told you."

"And on each occasion you had the same opportunity of seeing his naked arms?"

"Just the same."

"Now let's come to the second occasion. Did he do the same thing?"

"He did the same thing."

"Was this about the same time?"

"About the same time."

"About ten minutes past eleven?"

"Yes; because I left him about——"

"I don't want to know your reasons. Did he just rub one arm so, and then the other so?"

"Yes; he was rubbing his naked arm."

"And each time you had the opportunity of seeing it?"

"Each time I saw it."

"Rubbed it outside?"

"I don't know what you mean by outside."

"Did he always put his hand inside?"

"Inside of a shirt," says the confused Bogle; "Always put his hand in—I don't know."

"But I want you to know—you recollect it you say?"

"If your shirt was unbuttoned, and you was rubbin' your arm, Mr. Hawkins, you would draw your sleeve up."

"Never mind what I should do," says the cross-examiner; "I want to know what you say Roger did. Why do you think he rubbed his arm this time?"

"I suppose the same as before."

"A flea?"

"I suppose so."

"But did you see him, Bogle?"

"I told you, Mr. Hawkins, I did not."

"Excuse me, that was the first one."

"Well, this was the same."

They had to wait some time, because the laughter was perfectly irresistible, and no amount of usher power could restrain it. And upon so important a point this laughter was as good as many witnesses against the theory of there being no tattoo marks, and Bogle's evidence of their non-existence. At length Mr. Hawkins continues:—

"You say there were no buttons on the sleeves, Bogle?"

"I don't believe there was, Mr. Hawkins."

That is a good fair start for witness and counsel. It begins like a nice friendly conversation, as calmly as possible.

"Do you know," asks the counsel, "whether there were buttons or not?"

"I don't believe it."

"But do you *know*?"

"I do not know."

"But I daresay you know this—that if a man has no shirt-buttons his sleeves would fall open a good deal?"

"I know every man has shirt-buttons, but they come off."

"Were the sleeves made to button?"

"Yes, of course?"

"And on every one of the three occasions it happened to be unbuttoned?"

"Each time I saw it."

"Now let us come to the third occasion. Do you recollect that?"

"I do."

"Do you recollect which arm you saw?"

"I saw both."

"Both arms up to the elbow?"

"Occasionally."

"Just point out where it was you saw him rubbing."

Bogle points out the spot.

"That's the same place as before?"

"The same place."

"The same place on all three occasions?"

"Yes."

"With sleeves unbuttoned?"

"Yes."

"Why did you notice them particularly?"

"If you pull up your sleeves," says Bogle, "I can see it without noticing it particularly."

"But you would not notice my arm?"

"If I was sitting with you, and there was two

sleeves, and if you rubbed your arms, would I not see you?"

"You would look at my arm and notice it particularly, so as to recollect the circumstance for five-and-twenty years, would you?"

"I would be noticing what you was doing."

"Do you seriously mean to say you took notice of his arms?"

"I seriously mean to say I saw him rubbing his arms, and saw no marks on them."

"When did you first recall these circumstances to memory?"

"What circumstances?"

"These summer evening rubbings of his arms in 1851."

"I don't know."

"When did you first of all remember it?"

"I thought of it when I first heard the tattoo marks mentioned."

"Yes?"

"And I said if he was tattooed I ought to have seen it."

"On the last occasion, did you think it was the flea again?"

"I suppose so."

"What time was it? About the same time?"

"Yes."

"Ten minutes past eleven?"

"Yes."

"Then all I can say is he must have been a very  
*punctual old flea.*"

Which observation is enough for Bogle and his evidence. It explodes amid a peal of laughter.

## HOW TO CROSS-EXAMINE FOR THE OTHER SIDE.

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By way of contrast to this effective cross-examination, I will give an illustration of one not so effective. It will show the danger of being too minute and circumstantial, the usefulness of a judicious re-examination, and how such re-examination may be admitted through a very small opening.

Let it be remembered that this is another instance of the advocacy of leading men, whose experience seems to have innured them to danger, showing, as I take it, that something more is required in advocacy than mere practice to make perfect. The circumstance arose in a case where the validity of a will was the question in dispute. On the one side the testator was alleged to have been perfectly capable, and by the other side as perfectly incapable, of understanding the nature of the act he was doing. Eminent advocates and hard-swearing witnesses abounded on both sides.

One witness swore that the testator, in his opinion, was of sound mind, memory and understanding. He gave his evidence fairly, and seemed desirous of establishing the will.

He was then cross-examined in the following manner :—



"I believe you were related to the testator, were you not?"

"I was."

"Nearly related?"

"Yes."

"And would have an interest in the will if established?"

No objection seems to have been taken to this question, which was very near speaking to the contents of a document which was not read.

The answer was "Yes."

If the advocate had asked nothing further, it was a good point made, and certainly would have materially affected the value of the evidence as to the soundness of the testator's mind, because the witness had *a direct interest in establishing the will*. But in spite of the remonstrance of his junior, the leader continued his cross-examination, and asked—

"Would you take as much as ten thousand pounds if the will were established?"

"I should," said the witness; and, as the newspapers reported, "there was profound sensation in Court."

Of course, if matters could have remained here, the profundity of the sensation would have been permanent; but the watchful counsel on the other side quietly remarked:—

"Just one question. Have you made a calculation as to what you would be entitled to in the event of an intestacy?"

"I have."

"What would it be?"

"As next-of-kin I should be entitled to *fifty thousand pounds*."

Cross-examination not effective, *except* for the purpose of letting in this fact, which let in the will, and also let in to a considerable depth the cross-examining counsel. This almost seems incredible; one of the frequent characteristics of truth. There are so many mistakes made by experienced counsel that one sometimes doubts whether practice really makes perfect: if it do not, I will affirm that careful study of human nature will bring you much nearer to it than any amount of so-called practice, which often is nothing more than physical exercise.

Merely shooting at a target is not much, but the careful study of the rifle, the amount of pressure required on the trigger, the direction and force of the wind, the state of one's nerves on the occasion, the clearness of the atmosphere, the "pull," and other trifling matters, are a good deal, and no one will excel unless he study them.

A man by nature may be an advocate; he cannot become one by practice; but he may perfect his natural gift by careful study of the motives that touch the springs of human action. You may not be able to learn much advocacy in a Court of Justice, but you may learn a good deal in the market-place, on the race-course, and at country fairs, especially "Goose Fairs."

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#### CROSS-EXAMINING TO THE CREDIT OF A WITNESS.

This is always a dangerous, and too often a disastrous and cruel performance. None can do it gracefully or approvingly. It exhibits generally a weak case and a malignant mind. For, mark you, what-

ever questions are put are not the inventions of the prolific genius of the advocate; but *are conveyed to his mind by the client, who will ultimately, if they fail to demolish the character of his opponent, have to pay for the luxury of them.* The advocate is responsible for the use he makes of his instructions, not for the instructions themselves.

How is that relevant, Mr. Jones ? ” asks the judge by way of remonstrance, as Jones is unlimbering his Gatling for the purpose of pouring it into the witness’s character, loaded as the fieldpiece is with all the errors and supposed errors of the witness’s past life that could be collected or invented against him.

“ Oh, my lord,” says Jones plaintively, as though he were unkindly interrupted in the performance of an act of mercy :

“ It goes to the witness’s credit.”

“ Oh,” says his lordship, and then the jury just tap the ledge of the desk with the tips of their fingers—and a good deal of meaning there is in those taps :—take care, Jones, the gun may burst ! Jones might have added, “ My lord, at present my client has only succeeded in breaking up the witness’s home ; he is now about to ruin his character : it may be to make his children hate and his wife despise him ! ”

“ Ask him,” says a money-lending plaintiff in a bill of exchange case, “ *whether he isn’t a Jew ?* ”

“ But,” says the counsel, taken all a-back at the suggestion, “ what does that matter ? ”

“ It will *prejudice the jury* against him,” says the plaintiff.”

“ But you are a Jew, sir ? ”

“Yes; but the jury don’t know that. I am not a witness.”

This is the usual spirit in which counsel are instructed to cross-examine “to the credit of a witness,” and I need not say a cruel one it is. Spite and malice are generally the moving springs of *that* species of attack.

The greatest mistake an advocate can make is to let his client dictate to him the mode in which his case is to be conducted. Either use your own judgment, or resign your duties to the hands of the gentleman who desires to conduct your case. You cannot drive a coach with your back to the horses.

There was a famous case not long ago which is extraordinary in many aspects. Extraordinary for the way in which experts swore; extraordinary for the enmity which was exhibited by some of the partizans as well as the defendant; extraordinary for the mode in which the character of the plaintiff was assailed, both out of Court and in.

There was no defence to the action: could be none when plain common sense was brought to bear upon it. There was no defence when the law was brought to bear upon it.

There should have been an apology and a retraction; but you may always defend some actions, even though there is no real defence. The point I am about to direct the attention of the reader to is the attempt to destroy the plaintiff’s character in an absolutely undefended case, and the consequences resulting therefrom. You may be sure that juries will make you pay for unfounded attacks upon witness’ characters. They invariably take the *advocacy*

of the cause into their reckoning with the cause itself, and no one has power to prevent it. Try to reduce damages if you like, but you will find it difficult to reduce them on the ground that you aggravated your original wrong by abusing the plaintiff. Human nature has not yet been tutored by fierce advocates to put out of its calculation the injury done to a plaintiff by the defendant's *mode* of attempting to escape a just liability. You may injure your adversary more by firing at him in your retreat than you did in your first attack. This will be taken into account by the jury, although it forms no part of the original claim.

The extraordinary case I allude to was an action for libel. The plaintiff was asked in cross-examination whether he had not committed theft and forgery. The charge was indignantly denied. There was, indeed, not a shadow of foundation for such a charge. I wonder why, after this, he was not asked whether he hadn't murdered his mother. He could but have denied it.

After some considerable time the defendant went into the box to prove the truth of the libel; *and by way of clearing up* the matter of the charge of theft and forgery he was asked, as a sort of "By-the-by, Mr.— now you are in the box we may as well dispose of this little matter about which there seems to be some little misapprehension."

That was the tone of injured innocence, assumed in consequence of the plaintiff denying that he was a forger. Observed the learned Queen's counsel:—"Something has been said about the plaintiff and a cheque. I don't want to make too much of it, but *for his sake* it ought to be cleared up."

Such kindness, I need not say, verily received its reward.

"Oh, yes," says the defendant, "I remember."

"You remember?" repeats the counsel.

"Oh, yes; quite well," says the witness.

"We may as well clear it all up. You had a cheque, had you?"

"Yes."

"Where did you keep it?"

"In my desk."

"And what happened?"

"I suppose he took it, and signed it——"

"Did you authorise—ah, well!—you don't wish to go into it?"

"Oh, dear no!"

Poor man, he little thought he was already "into it" to the depth of four or five thousand pounds!

Counsel sits down.

"Now," says the junior on the other side, in true Ciceronian style, "just attend to me. Have you talked this matter of the cheque over this morning?"

The witness never expected this question any more than his counsel did; but it was just *the* question to put, and the only one that could have the effect it did. But what is the witness to say? He *must* answer "Yes."

"Did you talk it over with your solicitor?"

Bound to answer "Yes."

"And was it arranged that you were to be asked the circumstances of this alleged robbery?"

No other answer than "Yes" can be given.

It was *not* an accidental thought of the learned counsel you see, but a planned and deliberate renewal of the attack upon the plaintiff's character.

Thus, literally, in the *interest of the plaintiff*, was it cleared up at an expense of *some thousands of pounds* to the defendant.

It may be as well to give the opinion of a distinguished writer on this subject.

The late Charles Reade, in a letter to the *Daily Telegraph*, entitled, "The rights and the wisdom of Juries," says, with reference to the defence:—

"Right or wrong, they found some injurious exaggeration in the original libel, and much *malicious exaggeration in the defence*, which the defendant selected. Now, all juries argue backwards, from the animus of the defence to the animus of the original libel, and they have a right to do so. As to damages, here I drop conjecture, for I think I know the ground on which they settled them. *They decupled the damages because the defence centupled the libel.*" . . .

The mild issue of "*thief or no thief*," was suggested, and the plaintiff was tortured, yet cleared. Where was his remedy for this attack? It was in its nature indictable, yet he had only the jury in this suit to pity him and to compensate him. God forbid that defendants in libel should be encouraged by trumpety damages not equal to the plaintiff's costs, to stab another in so holy a place as a temple of justice, with any irrelevant dagger the ruthless hand can furnish to the passionate, and therefore remorseless heart.

The defendant selected his own defence. He could have resigned the verdict, and reduced the costs and damages to a trifle. He preferred the bold course, though he and his counsel knew it was the perilous one."

Mr. Read speaks of the danger of such a mode of examination from a point of view different from mine; he regards it from the public standpoint and as a malignant attack by the defendant himself. I look at it from the advocate's position only.

Subsequently, on the motion for a new trial, the whole blame of putting the offensive questions was bravely accepted by the defendant's counsel. The blame doubtless might so be appropriated, but it could not be shifted from the defendant, who told the learned counsel that the plaintiff was a forger and a thief? The original libel could not be appropriated by any number of counsel, nor could the subsequent slander. It was not *invented* by the advocate, and the advocate could not be punished for it. To relieve the defendant from the consequences of the slander, without paying the penalty, was only making matters worse, because it was an attempt to avoid the pecuniary consequences which must ensue.

An advocate cannot take the blame of his instructions, he can only accept the responsibility of acting upon them.

It is unquestionably right sometimes to attack private character; *but* you must be sure of your ground, and skilful in your mode of performance. Time and circumstances must be taken into account.

Suppose a murder had been committed at a house of "ill fame," do you think it would be useful to ask the keeper of it whether he had ever been convicted of keeping such a house? It would be absurdly inconsistent with the nature of the enquiry. But if such a witness came up to give evidence of another man who was indicted for keeping a house of that



character, the question then would be all important, as it would throw light on the *motive of his evidence*, and absolutely destroy any value it may have possessed. Don't imagine that you are always advocating your client's cause because you are putting questions or making speeches. You may ride on a rocking-horse all day long and fancy you are hunting, but such a performance, however creditable to your imagination, will say little for your judgment.



COUNTY COURT  
ENTERTAINMENTS.

“ I will description the matter to you, if you be capacity of it.”  
*Merry Wives of Windsor.*

## COUNTY COURT ENTERTAINMENTS.

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"A man often becomes little by thinking himself great."—M. A. H.

WHEN the bill for extending the jurisdiction of County Courts was before the House of Commons, the legal members of that assembly were severely silent. They are always carefully studious of saying nothing in defence of the "interests of the profession." But if the profession is not antagonistic to the public, surely its interests are as proper a subject of championship as the interests of brewers or any other trade.

But perhaps the silence was occasioned by the fact that if the particular bill should pass litigation would be increased, and the consequent expenses multiplied. The County Court can never, I presume, be anything more than a Court of first instance for important cases.

But it is not necessary that the question of the advisability of extending the jurisdiction of the County Courts, should be considered with reference to the profession at all.

The Bar may cease to exist, although advocates will remain as long as the public require their services, and that will be as long as the public have differences to adjust. It is easy enough to extend the jurisdiction of a Court, as it would be simple enough, in more senses than one, to confer the power of trying criminals or causes upon every police constable; but

I doubt if it would be an unmixed blessing to the public. You might make anyone a judge by Act of Parliament, but you could not make him a lawyer by the same process. Inferior law is not law at all, and inferior justice, although it might be cheap, is injustice. Inferior judges, as a rule, are not created out of the same class of material or for the same reasons as superior judges. Unquestionably many County Court judges are equal to the best, and, given the same opportunities of assimilating their learning, with the opportunities afforded to the judges of the superior Court, by sitting with them in Banc, they would be every whit as capable and trustworthy. But here the danger to the public and the difficulty to themselves begin. They cannot sit in Banc; they cannot assimilate their learning; they are not regarded as exponents of principles, as authorities for precedents, or as competent reviewers of decisions. Further than this, there have been, and may be again for aught I know, County Court judges who, to say the least, have not justified the wisdom of their appointment. It is not possible for human nature to ignore all influences and to act with the perfect impartiality of a Deity. Omniscience alone could do this, and even Omniscience must be all wise.

Again, while you speak of the County Court, you speak of a system, and must take that system at its worst, and not at its best, otherwise the public somewhere and in some shape or other will be the sufferers.

It is bad enough to have indifferent law up to £50, but the delay of business in the superior Courts is no valid reason for compelling the public to take a larger quantity. Increase the jurisdiction as you

may, it will not be possible to get the best qualified men, in the prime of life, to accept the dignity of a County Court judgeship while that dignity is the inferior dignity it is. Men of large practice are generally the best qualified for judgeships, but these are precisely the men whom County Court judgeships will not attract. If therefore you have to cast about and select your judges from the unsuccessful, it is obvious that, although your resources may be larger, your standard will be lower.

In the next place, however able may be the judge of your selection, you can only raise him to the level of the superior judges by making him a colleague. *He must sit with them in Banc*; his learning must be subjected to the process of assimilation, and this can only be accomplished by a critical comparison of cases, and an uniformity of opinion based upon a careful examination of principles. Every mind cannot detect every fallacy, but it may appreciate it readily enough when another mind discovers it. Different minds regard a case from different points of view, and often it is only when thus regarded, that the true principle which should govern a decision can be perceived.

Sitting in Banc is in itself an education, and the contact of minds is the best of all modes of producing an unerring decision. A judge, performing his duties apart from other judges, must become isolated in his opinions, biassed unconsciously by local influences, and warped in his judgments.

There would be almost unavoidably a *lex loci* in each district. Let a case, decided by the highest authority, be ever so clearly stated, and ever so carefully studied, it is not within the bounds of possi-

bility that isolated judges will uniformly apply its principles. One local judge will decide one set of facts by it, another will compress into it a different combination of circumstances altogether; not perceiving, perhaps, that although the facts may be similar, their combination may be different, or not distinguishing a slight deviation from the authoritative case which makes it no authority at all. Allow this to proceed, and the result will soon be that while one law is being administered in Cornwall a different law will obtain in Cumberland; both descendants from the same parent case, but bearing no trace whatever of family relationship; both, in fact, wrong in principle.

The Superior Courts themselves are not altogether exempt from this danger of gradual and almost imperceptible departure, but it can never proceed to to any length without discovery and correction. The constant contact of judicial minds is the surest, if not the only guarantee, for a certain and uniform administration of justice.

It is true the errors of local judges may be corrected on appeal, and that I presume is what is intended by those who desire to increase the jurisdiction of County Courts. Otherwise you would be forcing upon the country the caprice of the local judge, instead of the law of the land. But if you give an appeal, you at least *double the amount of litigation, and treble the costs of the litigants*. This is the doctrine of what is called in other spheres double or quits: only there is no "*quits*."



# COUNTY COURT ENTERTAINMENTS.

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*Before CECIL STANLEY JENKINS, Esq., Q.C.*

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SHOWING THE TEMPTATIONS TO COMMIT AND TO BE  
COMMITTED FOR CONTEMPT.

“Is it a dream, or do I see and hear?”—*Shelley.*

WE approach a gloomy building, enclosed in a narrow piece of vacant ground, partially paved with the odds and ends of the parish stone-yard. This pavement forms a kind of causeway from the rusty iron gate to the dingy and dirty entrance to the building. The remaining portion of the space is devoted to the culture of some fine specimens of fungi, nettles, and other interesting productions. Except for a melancholy toad, that contemptuously turns his face to the wall in a corner of the yard, near the judge's entrance, not a living thing appears in these vacant precincts—not even a worm, although there are visible evidences that worms do occasionally wander in these parts, as well as defunct cats; for one of these last-mentioned individuals is waiting its obsequies in the immediate neighbourhood of the scornful toad.

The building is dismal looking and gloomy in the extreme. The old paint is blistered and blotched, and the ironwork rusted and fretted. Anything would fret with such surroundings. The edifice looks more like a huge charnel-house in an old graveyard, forsaken since the Plague of London, than a

Temple to which living beings resort to have their legal disputes adjusted by the representative of Her Majesty. But, if you carefully examine the bleared and chipped surface over the doorway, you can see it is such a Temple, for there yet remain some of the plaster or mud letters of the words "*County Court.*" And you may also trace out a horn of the old unicorn on one side of a circular space, and the tail of the old lion on the opposite side. Doubtless this pair of ancient and irreconcilable enemies are not ill-pleased that their degradation is hidden from the public gaze by an obscurity of dirt. It is the first time I ever saw them *not in the act* of fighting. Perhaps in their common woe they have become temporary friends; adversity will sometimes reconcile enemies. Perhaps, on the other hand, this long-continued battle may have come to a conclusion by each combatant demolishing and annihilating the other, leaving only a horn on the one side and a tail on the other to testify to the prowess of the parties.

But, whatever was the state of affairs outside, it was necessary, for the furtherance of my object, to ascertain what was the condition of matters within. Accordingly, I steered my way through the foggy gloom, to the entrance to this Temple or Tomb of Justice, whichever name you may prefer to give it. As I entered the gas lighted passage leading to the Court, I heard a loud, exclamatory voice, as if someone were in a mighty passion :

"Be quiet! hold your tongue! stand down, or I'll commit you to prison!"

It was like a series of thunder-claps.

"What is that?" I meekly asked an important-looking gentleman who was robed like one of Her

Majesty's counsel, and was evidently something about the Court. This "something" is, more correctly speaking, "an usher."

"Oh, it's his Honour; he's rather deaf."

"Is he talking to himself then?" I inquired.

"Oh, no; there's a old woman as has been and got in debt to a tallyman, and now can't pay."

"And his Honour is trying to make her, is he?"

"That's about it, sir—you don't know what it is to deal with these here people."

"No, thank God, I don't!" said I, "if you have to deal with them in that manner."

I then peeped into "the Court;" and, no sooner had I thrust my head through the doorway, than I was smitten in the face with such a combination of foul stench, as no words or chemical terms could describe. I no longer wondered that the toad outside looked ill. There was a pestilential atmosphere, dangerous, I should think, to the constitution of a sewer rat. But, just as I was entering, a roar of laughter broke forth from the closely-packed and steaming crowd. I never heard more hearty laughter—it was the only thing that seemed hearty about the place. The usher, as usual, cried "silence!" but to no effect. His "honour" had made a joke at the expense of an unhappy defendant's name, and the dirty old building rang, roared, and shrieked. The solicitors at the cramped table, however, did not laugh. They looked sad, as though they felt their profession dishonoured by the scene. Having entered an atmosphere you could not only smell but actually see, I was a little overpowered, and mentally ejaculating—"Is this a Court of Justice?" retired again to the neighbourhood of the melancholy toad.

There I stood, wondering if it were possible that Justice, which is an attribute of the Creator, and the highest function entrusted to mortal Sovereignty, could find even a temporary shelter in such a den?

My friend, who was the well-known "Intelligent Foreigner," asked me to explain the Judge's joke, which I did. He seemed to think it a poor one, and not worthy the reception it had met with.

"What sort of a joke can you expect," said I, "for fifteen hundred a-year? You judge too hastily, have a little more patience, and you will find that the County Court is the most amusing, as well as edifying, place in the country."

This encouraging remark seemed to compose him, and, luckily at that moment, with a yell and a shriek of laughter, out poured a dirty crowd of persons of both sexes and all ages.

"Whatever is it?" asked my South African friend.

Presently one of the foremost of the crowd, doubling himself almost together with the convulsive exercise of his risible faculties, exclaimed—

"Oh, ain't his honour in rippin form to-day? My eye, what a lark! Talk about a play, Bill! Oh dear, dear, dear! I thought the ole dooman would a chucked the babby at his honour's head!"

"And didn't he pitch it into that air lawyer, my eye!" said another; "he won't open his mouth agin for one while, I'll warrant. What did he call him, Bill—a harpy? O dear, dear! dear! dear!"

The next scene was of more sorrowful aspect, for there emerged from the dirty portals a poor, emaciated-looking creature with a weak-looking baby, and three or four girls, ranging in age from three to thirteen. The mother had her apron to her eyes, and

was crying bitterly. The girls were crying also—the little ones out of childish sympathy, because the mother was crying: it was not possible that those little human creatures could understand that their father had been committed to prison for a month for *Contempt of Court*: any more than it is possible for grown-up persons, with the clearest heads, to comprehend the legal fiction whereby a County Court Judge, who is not permitted to commit a debtor to prison for non-payment, can commit him to prison for not obeying the order of the Court, such order being that he is to pay. But such *is* the legal fiction, or rather the two-edged legal sword, wielded by County Court Judges. After this judgment, the poorly-clad children, with their half-starved mother and baby, went their way, weeping, to their desolate home; doubtless, admirably impressed with the dignity of the Judge and the majesty of English law. “May someone help them to a Christmas dinner!” I whispered.

We now thought we could venture again into this Palace of Justice: so, pushing through the crowd, we reached once more the insalubrious but Divine portals.

There sat the imposing embodiment of Judicial Majesty—and there stood the crowd ready for a Judicial joke. The first words we heard were,—

“Damned Judge!”

At which, you may be sure, there was appropriate laughter, not by any means deficient in quantity.

“Hallo!” whispered the Foreigner, “who did that?”

“I don’t know—we shall hear,” said I.

And while the laughter, and the bustle, and the throwing back of heads, the shuffling of feet, and the

noisy attempt to enforce silence and order were continuing, I heard from a solicitor, what had given rise to so extraordinary an exclamation.

It appeared that an action had been called on in which the plaintiff had lent money to the defendant on an I.O.U., which the plaintiff produced; although the defendant said he had paid the money he had no receipt. The plaintiff testified that the defendant had told him that he had paid the money, and would not pay again, and no d—— judge should make him.

Upon this his honour turns to the defendant, and with great judicial dignity exclaims—

“But I am not a damned judge, and your damning me won’t make me a damned judge any sooner, and I shall stay here till I resign or die, irrespective of your damning me or anyone else damning me!”

“What noble sentiments!” exclaimed the intelligent foreigner, “what wonderful sa-gas-ity! I suppose he is a gra-at man?”

I said “No, but he is a great friend of a great man, which is better.”

“I zee,” said the foreigner, “magnificent!”

The next scene was not unworthy of the first. A remarkably ill-clad woman stood trembling in the witness-box, while an application was made against her for an order to commit her to prison for contempt of Court. The contempt, of course, was non-payment of money *ordered* to be paid. She had incurred a debt, during an illness, for nursing her baby, and had been unable to discharge it.

“Now, then,” asks the learned judge, “why haven’t you paid this money?”

“If you please, your honour, I can’t.”

"Can't! why not? That's the common excuse."

"Because I got this baby to look after, and aint able to go to work. I'm so weak." And she was weak enough to cry.

"I can't see how nursing the baby has anything to do with it," says his honour. "I suppose you think, because you got your baby for nothing, you can get it nursed for nothing?"

At this amusing speech there was great laughter. It was only natural when such a deluge of judicial wit burst on the astonished crowd. It was as funny as if his honour had taken the hose of a fire engine and turned it into the woman's face.

"You must pay or go to prison," roars his honour: "I will make the order, but it must stand over for a week."

"Pay in a week," shouts the registrar, and in the same breath calls on the next case. The expedition, indeed, was truly remarkable. But then you must not linger over a case when you have hundreds to try in a day. If you extended this learned judge's jurisdiction, I doubt very much whether you could extend his aptitude, or confer upon him the requisite amount of patience to deal with the poor objects who constantly appeared before him as plaintiffs and defendants.

"What is this contempt of Court?" inquired my friend, as we left the Building.

"It is this," said I. "If the judge ordered you to pay fifty pounds, it would be contempt of Court not to do so."

My friend drew a long breath, and, it struck me from his general appearance, it would take him a long time to purge himself from his offence.

Before JUSTINIAN BERKELEY GREY, Esq., Q.C.

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WIT, WISDOM AND WHIM.

"They see th' attentive crowds his talents draw,  
"They hear him speak—the oracle of law."—*Cowper*.

THE intelligent foreigner and I next visited a County Court in a remote country town, where sat a very old man as the presiding dignitary. He had, it appeared, written a book many years before, and had never got over it. This book was mentioned on every possible occasion; sometimes you would think when the occasion seemed impossible.

He was most ingenious in applying its principles, which seemed to fit in with almost every case that came before him. It always lay on the desk on his right hand, ready to be consulted at a moment's notice.

The present action was an interpleader issue, and the facts were these. A landlord had, on a previous occasion, brought an action against his tenant for breach of covenant in not farming according to the custom of the country, and recovered judgment for £50. Execution had issued, and certain beasts, with other things, had been seized by the judgment creditor. A bill of sale, however, was produced to the sheriff's or bailiff's officer, and then followed the interpleader issue which his honour is about to try. The questions were, as to the bill of sale being good, and, if good, what damage the farmer had sustained in consequence of the seizure



of cattle and other stock, which had actually been driven away from the farm, *and badly treated.*

"I think," said his honour, "I may appeal to the learned counsel whether this is not a case which can be better tried by me without a jury."

I need scarcely advise the youngest counsel that if he have any powers of advocacy at all, and the question be one that a jury *can* try, never to yield to judicial blandishments of this kind. Many a case, one can remember, that would have been irrevocably lost, but for the intervention of a jury. The prejudice of one mind is often counteracted by the good sense and impartiality of another. And you may take it for granted, that if you are possessed of any ability at all, where you would lose with a jury, you would in most cases lose with a judge; but on the other hand, where you would win with a jury, you would often lose if only a single mind were brought to the consideration of the facts, especially if it lacked the technical knowledge necessary for the due appreciation of your case.

The counsel, therefore, while thanking the judge for his suggestion, intimated that it was a case peculiarly adapted for a jury of farmers, and that his client, without wishing to be understood as not possessing the most unbounded confidence in his honour's judgment, at the same time respected the time-honoured custom of trial by jury.

"Be it so," said his honour; "but before we begin, we will refresh the 'inner man', so let us adjourn for half an-hour." (His honour was much given to judicial joking.)

It was one o'clock, on a December day: this was a

long case, and not to be finished unless the whole day had been appropriated to it. It had waited, with all its expensive array of counsel, solicitors and witnesses, while the morning had been occupied with tallymen's claims against the fathers of half-starved families; claims for tinkering a teapot; mending a chair; for three week's rent, at 2s. 6d. per week; for distraining Mrs. Muggin's box, and hurting Mrs. Muggin's baby; and with every other variety of business, for which County Courts were originally created, and are so eminently qualified to deal.

But here was a case of importance, not to be treated in the rough and tumble fashion which sometimes prevails at these Courts; but to be examined carefully, and the exact rights of the respective persons clearly and legally ascertained. If we are to have law, we cannot take too much pains to preserve it in its purity; but if we are to have law that springs from the caprice of an individual, instead of well-digested statutes, and well-considered precedents, it will, in all probability, be a bastard production.

His honour's "inner man" having been refreshed, the outer man proceeded to disport himself before an amused public. "This is a case, Mr. Brown," said his honour, "in which there is a bill of sale. Now my book deals largely with this question——"

Mr. Brown: "It does, indeed, your honour—most exhaustively. I find at page 790, your honour thus states the law upon the subject——"

"Ha! Be it so! I will read it;" and his honour reads.

"That is just my case, your honour, as I am about to tell the jury."

Objection by the opposing counsel overruled by his honour.

Counsel for plaintiff: "One would think my learned friend had never heard of your honour's book?"

His Honour: "Ha!"

Counsel for defendant, emphatically: "I hope my learned friend will not say that. I have read it, your honour."

Counsel for the plaintiff: "The solicitor who instructs my friend has not."

His Honour: "Ha!"

Solicitor who instructed the friend, springs to his feet, and vehemently exclaims—"I beg, most emphatically, to contradict the learned counsel. How dare he say I have not read your honour's book?"

Counsel for plaintiff: "I thought, your honour, he looked as if he had not read it. If the solicitor gives me his word of honour that he has read it, I must be satisfied."

His Honour: "Ha!"

Solicitor: "I must appeal to your honour!"

His Honour: "Well, if you haven't read it, Mr. Simon, you had better get the new edition, which will be out in the course of a few months. Really, you have no idea of the worry and study attached to writing a book!"

Counsel for plaintiff: "Especially so erudite and exhaustive a work as your honour's."

His honour, who was pleased to be a trifle facetious: "You might say *exhausting*, Mr. Brown."

Here there was an explosion of laughter all round the Court at his honour's profound wit.

These preliminary proceedings were very like the performance on the outside of a travelling theatre, between "Mr. Master" and "Mr. Merryman," before the cry comes of "all in to begin."

Now the learned counsel proceeds to open the case to the jury, expatiating upon the merits of his honour's Book by way of explaining what the conversation between Bench and Bar had been. His honour interrupts, and says that he has had this case before him on two or three previous occasions; and being fully cognisant of the facts, asks if it would not be better for him to state them to the jury, accompanied with his view of the law thereon? The counsel, feeling it is just probable that his duty will be by-and-by to upset his honour's verdict as given on the last occasion, and also to change his honour's mind with regard to his previous ruling as a matter of law, expresses himself as under the very deepest and most everlasting of obligations for so singularly condescending a proposal, but in the end prefers to do it himself. Has not proceeded far, when his honour asks him not to speak quite so loud as "some sensitiveness of his honour's tympanum causes the effect to be like the Falls of Niagara," which leads to an anecdote of a very humorous nature, well within his honour's recollection as having occurred some forty-seven years ago; and then comes a very amusing joke, and at last a steadfast settling down to the serious business of opening the case.

Time, 4.20. Weather foggy.

"Ha! must have some gas. *We want some light thrown on the subject,*" jocularly observes his honour; which jocularity makes the counsel for the plaintiff

laugh most immoderately, while the "other side" are getting seriously vexed at the increasing probability of the case not finishing that night, and making to themselves all sorts of irrelevant and irreverent observations. There is nothing further really done than the opening speech, which seemed to make a very wide opening indeed into the case made on a previous occasion, and on which his honour had given judgment.

So far from his honour opening the case and knowing all the facts, the case seemed to be of a totally different shape from the last, while the facts were altogether new. The same gun no doubt, your honour, but we have been obliged to get a new lock, stock and barrel, as your honour sees. In fact the case looks *more like one that his honour has been reading aloud out of his own book than anything else*, and his honour himself declares that it seems to him on all fours with it.

Then the counsel refers to a recent decision by Baron — in the High Court, when his honour suggests that it was decided according to the principle laid down in his own book, which is again quoted and animadverted upon in the most learned manner.

So, altogether it was a very interesting afternoon, and the case having got as far as the opening, his honour looks at his watch ; and, without a moment's warning, adjourns the case for a fortnight, declaring that he had no idea it was so late, and that unless he went at that moment, he should undoubtedly miss his train ; and all the people good-temperedly laughed to see his honour scamper off the stage.

On the day appointed all the actors in the comedy appear again. His honour takes his seat, and after some pleasant preliminary observations, the first witness is called and examined. But in the midst of the cross-examination a singular incident occurs. His honour is observed to be passing something between his right thumb and forefinger towards his mouth; then rapidly to pass a tumbler with the other hand in the same direction. His honour takes a mouthful of water, throws his head back, and thrusts the something which he holds between his thumb and finger as far as he can in the direction of his throat. Then his honour gulps violently and twitches convulsively, till his eyes start from their sockets.

Of course a scene like this produces a pause in the proceedings. Everyone mentally asks "what is the matter with his honour?" All eyes are directed to the Bench. Counsel stops cross-examining. Is the Court ill? or is it going to have a fit? Happily there is no immediate cause for alarm. "The Court" resumes its wonted appearance, only looking a little red and watery in the face.

"Ha! don't stop, Mr. Brown," cries his honour, "*I am only taking a pill*, and I may as well take this opportunity of saying, that if I had learned counsel cross-examining before me very often, I should want a good many pills." Whereupon there are cataracts of laughter, which neither usher nor registrar nor any mortal power on earth can stop—the joke being entirely "the Court's."

After the rafters had sufficiently "rung again," the course of justice proceeded; not in the fashion

of a majestic and sweeping river, such as rises in Westminster Hall, and fertilizes the country, but a kind of trickling, petty, broken, meandering rill, such as would trickle down your back from a boy's squirt. And then his honour interrupts again and says:—

“Ha! I have often remarked, Mr. Brown, that if I had my way, I would do away with cross-examination altogether.”

Counsel: “Yes, your honour?”

After this sagacious rejoinder there is a slight pause, as though his honour had propounded a riddle.

“Yes,” continues his honour, “I think it a great waste of time and very misleading. What I would do would be this—(you mustn't mind my taking another pill)—

“By all means,” says the learned counsel, “I trust your honour will not curtail so great a luxury on my account.”

More laughter, but not being at his honour, soon suppressed.

“What was your last question?” asks his honour.

“Ha! I was saying I would not have any cross-examination, and I was about to remark that I would have the counsel suggest to the learned judge what he wanted the witness to be asked, and then if the learned judge thought it right, he would put the question himself, otherwise he would not:

“Now then, have you any other question?” Mr. Brown.

“Yes, your honour.”

So the matter proceeds until, by-and-by, a witness is called (a solicitor) to prove the *intention of the*

*parties to the bill of sale*: (Objected to by the opposing counsel, who modestly remarks that the usual course is to let the deed speak for itself).

“Ha!” says his honour with characteristic shrewdness, “But this is the gentleman who actually drew the deed, and surely *his evidence is admissible as coming from an expert.*” And so the solicitor proves *the meaning of the deed from his recollection of the intention of the parties.* Good, sound County Court law no doubt, but which, nevertheless, trickles down your back in a very sensational manner.

Which way “the verdict went” is not a matter of consequence. What is more material is the way the judge went in summing up. You have doubtless often observed the summer flies in a room dancing up and down in an infinite variety of ways, striking off at all kinds of angles, coming in contact with each other from remotest points, and at most unexpected junctures. Not unlike those erratic creatures were the facts of the case blown about by the learned judge. When next you see summer flies thus disporting themselves, be good enough to try and count them, and you will then have a lively notion of the condition of the mind of the jury, as they attempted to follow his honour in his manifold and incomprehensible combinations and dispersions of the facts of this simple case. The result of the proceedings is of no moment to the reader, the eccentricities of the judge may be instructive. My intelligent friend was amused, not to say amazed, and expressed an opinion that if we had more County Courts it would be a great injury to the travelling shows.

I confess frankly that I lost my temper at this



remark, and rebuked my dusky friend for his impudence, with such a scorching look, that he was parched with thirst for the next four and twenty hours. Our County Court system may not exhibit the perfection of human capacity or the stamp of divine inspiration, but it was not for such as he, a gentleman of the darkest race hitherto discovered, to poke fun at the administration of justice in a country which I hope is a *little* above cannibalism.

Before *TENTERDEN CHURCHILL BROWN, Esq., Q.C.*

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A REMARKABLE CASE.

"Never was anything better perpetrated."—*The Rivals.*

At another Court, which my intelligent friend visited, the judge was somewhat hard of hearing, but remarkably quick of preception. This case will illustrate the necessity of advocates having a knowledge of their judge, for his honour sometimes conscientiously wobbles a little on his way to his ultimate decision.

"This action is brought for stuffing a tiger, your honour;" says Mr. Twanger, "for which the plaintiff claims £2 14s. 6d.—the ordinary price, I believe, in that locality."

"It's a large sum for stuffing a turkey!" says his honour, "isn't it?—what was it stuffed with?"

"A tiger, your honour!" (laughter.)

"A what?"

"A tiger, your honour!"

Mr. Mountain Daisy, seeing that there was some slight misapprehension, explains in his mild way that it was not a turkey, but a tiger that was stuffed.

"You certainly said a turkey, Mr. Twanger. I daresay you meant a tiger; but I can only go by what you say. Do you mean a real tiger, or—many years ago I recollect that the boy who rode behind a stanhope——"

"Oh, no, your honour—it was a real tiger!"

"Well, don't let us waste time—let us get on—call the plaintiff."

Plaintiff is accordingly sworn, and gives his evidence.

"I am a bird-stuffer."

"A what?" asked the judge, "Will you raise your voice?"

"Bird-stuffer!" shouts the solicitor, putting his hand to the side of his mouth.

The learned judge had him in a moment: his honour was noted for repartee.

"You don't call a tiger a bird, do you?"

The discomfited witness rubbed his chin.

"I was gwine to say, yerroner, that I stuffs animals as well as birds."

"Ha!" said the judge, "that is nearer the mark—keep to the point, and keep up your voice—witness mumbles so."

"Tell your story in your own way," says Mr. Twanger, "I musn't lead."

"Nó, don't lead," says his honour. "I remember, many years ago, the late Lord Tenterden used to say——"

"Silence!" shouts the officer.

"If there is any disorderly person in Court," says his honour, "bring him to me, and I'll commit him. Repeat your question, Mr. Twanger."

"Will your honour kindly give me the last answer?"

Judge—"What was your last answer, witness?—and just let me tell you to speak up—you mumble so that no one can hear you. They build these Courts in such a way that the voice dies away in the body of

the audience, instead of finding its way to the ear of the Court. Look here, witness, unless you speak up you will not be heard, and your case will be struck out."

"He comes up to me yerroner, and he says 'how much for stuffin a tiger?'"

"Yes."

"That's the way," says Twanger, "speak as if you were talking to someone on the roof of a house."

"Well, I says, a good deal depends on the size."

"I must ask your honour to take a note," says Mr. Mountain Daisy.

The plaintiff then explains how, finally, they came to terms, and that he was to be paid £2 14s. 6d.

"And was that a fair and reasonable price?" asks Mr. Twanger.

"It was," said the witness.

The Judge—"The usual price for stuffing tigers?"

"It was."

Then Mr. Mountain Daisy rises to cross-examine.

"Did you ever stuff a tiger before?"

"No, sir."

"Then," said the judge, "why did you tell me it was your usual price? I have a great mind to commit you. It's perfectly monstrous that witnesses should come into a Court and swear in this reckless manner. I remember, some years ago——"

Mr. Daisy shakes his head, in token of indignant assent to his honour's observation.

"With great deference," says Mr. Twanger, "the man is entitled to be paid if he did the work—there's authority for that."

"How do we know he did it?" asked his honour.

"That's admitted, sir. My learned friend does not

deny that he did the work—the question is, as to the amount. What the witness means is——"

"I object!" says Mountain Daisy, "A witness can't say what he means—I have authority for that!"

"I don't think, what he means, is evidence, Mr. Twanger; that is for me."

Mr. Twanger: "Surely, your honour, the witness can say what he means—I can ask him what he means?"

"Indeed, you cannot!" says Daisy; "that is for his honour. I understand your honour has already ruled that?"

"Ruled what?" asks the judge. "I have ruled nothing yet, that I am aware of."

"Your honour will judge of what he means."

"I think he may explain," says his honour.

"Then," says Daisy, "there's the case of *Willkins v. Dinah*."

"Oh, yes!" interrupts Twanger, "that was a will case, in which it was held that the Court must fathom the meaning of the testator from the instrument itself; but here there is no instrument."

"I think that case is distinguishable," says his honour. "You see the language there is definite and clear; here, it is anything but definite and clear, for the witness mumbles so, that I have the greatest difficulty in catching a word he says. Why don't you speak out, witness. We are losing a great deal of time, because you will not speak out. What size was this creature?"

Here both the solicitors speak at once, one saying it was about the size of a cat, and the other affirming it was nearly as large as a buffalo.

"Now what *am* I to take," says his honour, almost in despair; "one of you says it was as big as a rat, and the other, the size of a dromedary. How am I to take judicial notice of the size of a dromedary?"

"Some tigers is a deal bigger 'an others," interposes the witness, at which the learned judge gave him a look of withering scorn.

"We can shorten this case considerably," says Mr. Twanger, soothingly. "Did you charge a fair price?"

"It was too low, sir," says the tiger-stuffer.

"I have given the other side notice to produce," says Mr. Daisy.

"How can I produce it," asks Mr. Twanger, plaintively. "It was sold, as my friend knows, to a *travelling showman*."

"You may read a copy," says his honour, not exactly understanding what the notice referred to.

Here there was considerable laughter, in which his honour joined, believing that he had made some extremely witty remark, and; as a sort of rider, he asked the witness whether the tiger was a live or a dead one, and told him to be careful how he answered it.

"Dead!" says the witness.

"It is lucky for you," says his honour, with great dignity, "that you gave that answer, or I should have non-suited you."

The conclusion of this interesting case was in favour of the plaintiff, the respective solicitors having previously argued several nice points of law, which may be seen in the report of his honour's elaborate and exhaustive judgment.

Before *EVELYN CAMPBELL BRIEFLESS, Esq., Q.C.*

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"What says my bully-rook? speak scholarly and wisely."

*Merry Wives of Windsor.*

THE next Court was situated in a very romantic spot in the South-west. The judge was a particularly grave and unpleasant man. There was an acerbity about his honour which somewhat detracted from his dignity. His chief characteristic was irritability. I was informed by one of the solicitors who had the honour of practising before him, that if his impulsiveness and peevishness had not been counter-balanced by his great learning he would have been intolerable. "But much may be pardoned," he observed, "when law and justice go hand-in-hand."

Whenever a young advocate rose to address the Court, his honour's lip curled, and a haughty sneer was visible on the judicial countenance; but if a Queen's counsel appeared, the Court beamed with smiles, and almost rose to greet him. It was generally believed that his honour was of opinion, that whatever knowledge he possessed, was subtracted from the universal stock, the consequence of which was that the universal stock was infinitesimally small.

If his honour did not understand a young advocate, he would indignantly rave at him until he did. His honour has been known to call a witness a liar to his face, and to inform the advocate that he was unacquainted with the rudimentary principles of law,

which cannot now be true, because men are not called to the bar in consequence of having consumed a certain number of dinners.

I was also informed that his honour has been known to make a joke on an advocate's name, and even allude jocularly to the advocate's wife. But all these little idiosyncracies of disposition were counterbalanced by his honour's great learning.

His honour always endeavoured to get at the root of a matter, and would undoubtedly have found the root of a scaffold-pole if the pole had been before him.

His usual way was, as soon as a defendant appeared, to ask—

“Why don't you pay?” a question which generally capsized the luckless defendant on the spot; because he naturally concluded that the learned judge had already decided the case against him.

On the present occasion three important cases came before his honour.

As we entered the Court the learned judge, addressing the solicitor, was thus laying down the law—

“I have considered this matter since the adjournment, Mr. Gouts.”

Mr. Gouts, a somewhat short and corpulent solicitor, said—

“Your honour, Lord Erskine——”

“Lord Erskine!” exclaimed his honour, “you don't compare yourself to Lord Erskine, do you? I hope not.”

I thought that was very good, and so did the audience, for they laughed uproariously at poor Gouts.



"I have been considering this matter," continues his honour, "and I have come to the conclusion that it is for the jury to say whether or no there is any evidence of justification as set up by the bailiff."

"Surely it is not a question for the jury whether there is evidence, your honour? That is for the Court."

"Yes," said his honour, "but I shall ask the jury whether there is any evidence that anything the plaintiff did would justify the bailiff in what he did? That is how I shall put it."

Verdict of course against the bailiff.

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#### "ON APPROVAL OR RETURN."

The next case was one of considerable importance. The plaintiff sued the defendant for the price of a suit of clothes.

Judge: "What's this for?"

"Goods supplied, your honour. Please, your honour, on the 17th December——"

Judge (impatiently): "Wait a minute, we know all that. Why don't you pay the debt?"

Defendant: "Please, your honour, the clothes didn't fit; they was made disgraceful, your honour; the coat wouldn't hardly go on at all."

Plaintiff: "Why, your honour, he's got the clothes on now!"

Judge: How dare you interrupt, sir? You can't expect him to pay if the clothes don't fit—it's a monstrous claim."

“But he’s got the clothes on, your honour. And this is the first time——”

Judge: “You are interrupting again, sir. I must give a verdict for the amount claimed, namely, two pounds seventeen shillings and sixpence, to be reduced to one shilling if the clothes be returned in a month.”

“Good lord!” said the plaintiff, “but he’s worn ’em for two years, your honour.”

Judge: “Turn that man out of Court, it is the third time he has interrupted the proceedings. Next case.”

As the young man went out of Court I heard him remark to the plaintiff: “I calls these here clothes a law soot.”

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SHOWING WHAT AN EXTENSIVE JURISDICTION THE  
COUNTY COURT POSSESSES.

This was an action for meat supplied to the defendant, a young man, who evidently did not get his living by hard work.

“What’s this for?” asks the judge.

“Meat supplied, your honour,” says the plaintiff.

“Why don’t you pay?”

“Your honour,” says the young man, “I haven’t got any work. I aint able to pay.”

Judge: “What do you mean; a well dressed man like you not able to pay this paltry amount? Where do you get those clothes from?”

“If you please, your honour, I’ve got a harnt.”

“Oh, oh!” says the judge. “An aunt have you

and she dresses you up like a gentleman to go about seeking whom you may devour. Make an order on his aunt."

Here the registrar rises very quickly and whispers to his honour, who looks somewhat surprised,

"Very well," says the judge, "defendant must pay in a month."

I afterwards heard that the registrar's communication was to the effect, that the aunt of the defendant was only an *aunt in marriage*, and that in that part of the country you can only make an order on a defendant's blood relation.

Before *ELDON GROSVENOR FITZBROWN, Esq., Q.C.*

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“What importance and yet what modesty!”—*Goldsmith.*

THE next Court we entered was empty, with the exception of a melancholy young counsel who sat with his arms hanging over the back of the bench in front of him, and his head drooping. His wig was a somewhat shabby one, and, judging from its dishevelled state, I should say he slept in it. He was an interesting young man, with, as I thought, a touch of humour and a shade of cynicism in his composition.

“Is the Court up?” I enquired.

“Oh, no; it has only adjourned for a few hours.

“A few hours?” quoth I.

“Yes,” said he, “the case was this:—there was an application to commit a trustee in bankruptcy for not obeying the order of the Court to pay over the sum of £300. When the case was called on the judge said, ‘I think I’ve heard something about this before?’”

“Oh, yes;” answered the solicitor, “this is the sixth time it has been before your honour.”

“How is that?” asks his honour.

“Oh,” says Mr. Simper, “On every occasion, your honour has taken exception to some formal matter in the proceedings.”

“To be sure!” says his honour, “These documents must be extremely accurate in a case of this kind.”

"Then," continued the young counsel, "his honour asked if the warrant of commitment was made out. The solicitor said, no, it was not his duty to make it out. So his honour and the registrar, and the deputy-registrar, and the bailiff, and the solicitor, all adjourned to make out the warrant, and have been adjourned for the last three hours."

"Are you in the case?" I ventured to ask.

"Oh, no!" said the young counsel; "but I was very nearly in it—almost got a case to advise. As soon as the poor fellow heard that the warrant was to be made out for his committal, he asked leave to attend the funeral of his wife, promising to return at two o'clock. This was granted, and at the appointed time he returned. After waiting some time, he asked me what he had better do—feeling in his pocket, as I thought, for the two—four—six."

"Well," he continued, "I told him there were three courses open; the first was to pay the money——"

"Here" said he, "the young man drew a long breath, and evidently did not seem to think much of *that* course."

"The next," said the counsel, "is to go to prison." "Here the defendant shrugged his shoulders, and withdrew his hand from his pocket."

"The third, and last course open to you, is—to bolt!"

As I was thus conversing with the young counsel, a bell rang violently, and there was a great commotion. You could hear doors open, and feet moving in the direction of the Court. Then emerged from a dark corner an imposing-looking usher, shouting :

"Silence! Be uncovered in Court! Si—lence!"

Next came the under-bailiff, coughing respectfully behind his hand; thirdly came the bailiff, then the assistant-registrar, with a judicial cough, as though he would announce in the hearing of everybody—"We have done it." Then came the registrar, and last of all, with haughty gait, and as haughty a shirt collar, the learned judge himself, bearing in his hand the important document which had taken so many hours, and so many heads, to produce.

The Court by this time was filled. The audience had rushed in.

Having taken his seat with unusual dignity, and, bowed ceremoniously to the solicitor, his honour said:

"Charles Walker!"

Here the registrar whispered.

"Where is Walker?" asked the judge; "he was to be here at two o'clock—it is now nearly five."

A man timidly stepped forward, and with much nervous stammering said, "I saw him, your honour, about two hours ago."

"Where?" inquired the learned judge.

"About two mile and a-half off, your honour."

"What was he doing?"

"He was runnin' as hard as he could run, your honour."

"Towards the Court?" inquires the judge.

Oh, no! quite in a totally opposite dreckshun, and he had his boots under his arm."

"Boots under his arm!" says his honour, "what do you mean?"

"Oh, you can run so much faster with your boots under your arm, your honour!"

Here the young counsel rose and said :

"Your honour, the defendant Walker did return to the Court at the appointed time, and inquired for your honour."

"Well," said the judge, "do you appear for him?"

"Oh, no!" said the counsel, "but he told me that as he had kept his appointment, and ——"

"This is lamentable!" exclaimed his honour.

"He said he had an important engagement and couldn't wait."

At this his honour grew almost purple, and in pathetic tones thus vented his indignation :

"After an unprecedented amount of pains have been bestowed upon this individual, and every possible care has been taken to ensure the legality of the proceedings, I find the trustee Walker has thought fit to absent himself from this Court. I forbear remarking on the ingratitude of this unseemly behaviour. He has committed the grossest contempt of this Court. See what the result has been, three hours of the most anxious labour have been thrown away. I will not trust myself to express my opinion of the character of a man who neglects so solemn a duty on so frivolous a pretext."

The solicitor in the case here observed : "I presume your honour will now make the order prayed for."

His honour said : "I am not prepared to say at this moment what course this Court will take in consequence of the extraordinary conduct of this trustee. It is a matter which will require the most careful consideration, and I shall adjourn this application for

one month, and I order the trustee to pay the cost of the adjournment."

Solicitor: "I am afraid, your honour, there is not much likelihood of our getting the costs from Mr. Walker. Will your honour kindly say *costs out of the estate.*"

Judge: "That must be a matter for future consideration. Adjourn the Court."



## HOW THE GREAT WIGGINS WAS NONPLUSSED.

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SHOWING HOW THE WISEST MAN'S REPUTATION MAY BE  
AT THE MERCY OF A FOOL'S TONGUE.

AND now a vixenish, waspish looking woman steps into the box. Of course she holds a baby in her arms according to County Court custom. It is so general a practice that I should think, (were I not bound to know and understand every section of every statute that was ever passed,) it was under one of the County Court Acts, but I believe it's custom only.

Mr. Wiggins, a mild, good tempered, fat little solicitor, over a Gladstone collar, and through a Beaconsfield eye-glass, is looking at her. But he doesn't look long before the civil lady "gives it to him."

"You may look," she says, "but you'd better look at home!"

Poor Mr. Wiggins blushes and lets down the eye-glass. This was a bad stroke of advocacy. An eye-glass is a sort of banner under which some nervous advocates fight. She sees the flag hauled down, and knows she's got Wiggins, so she gives an emphatic nod to the gaping public as much as to say "You'll see presently!"

There was really nothing against Wiggins either as a man, a husband, a father, or a solicitor, and he

might have worn round his neck a mural tablet to his own memory if he had liked. But it is not pleasant, if you are ever so affectionate and good, to be told in a public assembly by a shrill female, who pretends to know something, "to *look at home*." One would a great deal rather be told to look out.

But from that moment all the Gladstone and the Beaconsfield of the man were gone. In advocacy, not the man who hesitates, but the man who fears, is lost.

After a period of considerable confusion, Wiggins ventures to look up, toys with a pendant seal, and then looks down. The lady, seeing the advantage she has gained over the weak Wiggins, looks at the audience and then at the discomfited advocate, and nods at him again as though she stood on his back and pecked at him in the nape of the neck with her beak. You could almost read her thoughts, she looked so impressive;

"You mustn't try them games on with me my man;" while to the audience she said by her triumphant visage, "*I know him—the traitor! All aint gold that glitters.*"

But Wiggins must make a supreme effort; so, gathering up his energies as for a mighty purpose, he says, with rather too much courtesy perhaps, "And pray, madam, who are you?"

"A honest woman, sir, which is more 'an you can say of yerself."

Laughter all round of course, chiefly at poor Wiggins; and the lady thinks she has now inflicted a final blow.

The learned judge never interferes in a conflict of this kind. His Honour contents himself with looking

on at the unequal contest, first fixing his eagle and judicial eye on the discomfited Wiggins, and then on the shrieking and sarcastic witness. His honour is deaf.

"Eh, madam!" says he, eh? "I wish you'd speak up, can't you keep your voice up?"

"Madam," says Wiggins, lifting the eye-glass as though it were a fourteen pound weight attached to his albert——

"And, *madam to you!*" exclaims the witness, "if it comes to that!"

"Look here," says the judge, when the laughter had sufficiently subsided, "turn more this way and keep your voice up. As soon as ever a question is asked you commence mumbling, and then your voice is lost in the body of the Court—just repeat that answer—eh?—eh?—yes Mr. Wiggins—O!—very well, now then, let's get on."

"Who are you?" asks the advocate.

"And who are *you* I should like to know?" answers the angry witness. "*I* know you, Mr. Wig-gins (great emphasis on "Wig").

"Eh, madam?" says the judge, "You *will* drop your voice—can *you* hear what she says, Mr. Wiggins?"

The student will doubtless think that the cross-examination is not making any satisfactory progress, and that unless the judge finds a stick wherewith to beat the dog they'll never get the pig over the stile.

"I claim your honour's protection," says the weak Wiggins. No advocate should ever need protection from the Court, although he may sometimes want it from a policeman when he leaves it.

"You must answer him," says the judge. "It's his duty you know. What was your last question, Mr. Wiggins?"

"Then let him keep a civil tongue in his head, or I shall tell him something presently he won't like to hear. I suppose there's law for me as well as for him, a ——"

"Yes," says the judge, who had been straining his ear with his hand behind it. "There's law for you, and a good deal of it, especially if you don't behave yourself!"

"Praps, sir, I can behave myself as well as a good many as is in a higher 'spear.'"

That "higher spear" was thought, by the British public, to be one for his honour. Did she know something about him, too? See how the judge is blushing. But he is also good-naturedly laughing; and that good-natured laugh redeems his character.

"What have you come for?" his honour asks. "You've not been summoned, have you?"

With a long S—the lady says:—

"S—ummonsed! what by a man like that? I call him no man to try and turn a poor woman as works for her family out o' 'ouse an' 'ome. I works for my livin', I do."

A bitter, sarcastic sneer was here levelled at the unhappy Wiggins, insinuating that Wiggins never worked at all.

"What's this all about, Mr. Wiggins?" asks the judge. "At present I have absolutely nothing on my notes. What is the nature of the plaint—is it grocery, or what?"

"Ejectment," shouts Wiggins.

“*Injectment!*” echoes the lady, mimicking Wiggins’ voice as nearly as possible.

“Oh!” says the judge. “You had better state the case.”

“State the case!” sneers the lady. “I ought to bring the action, your honour, for livin’ in such a hout-’ouse, for it’s no better.”

“Really!” says Wiggins.

“Now,” says the judge, “you must be quiet and listen to Mr. Wiggins, and then you’ll make your answer.”

“The action is not against her, your honour,” says the advocate.

“Eh!” says the judge. “Who? what?”

“The house aint fit to live in, your honour,” shrieks the witness. “The rain comes in all over—you can catch water by the tub-full.”

“Who? eh? Then I should think “you would be glad to leave it?”

“When he pays me what I’ve laid out on it, and not before. Why there aint a bit o’ flooring in the place!”

“Has she paid any rent,” inquires his honour, “eh? what?”

“Not a farthing,” answers Wiggins, “and has torn the place to pieces; she has burnt the flooring.”

“I wonder you aint afraid o’ the earth opening and swallerin’ you up, I do. It will some day.”

“Why,” said his honour, looking up from the careful study of the plaint note, “this is made out to Thomas Bull. Who is Thomas Bull? eh? what?”

“He is this woman’s husband,” says Wiggins, shouting at the top of his voice.

"Is he?" says the witness indignantly, and almost in a tone of denial.

"Is that so?" asks the judge. "Are you Thomas Bull's wife? eh? what?"

"Beggin' of your parding, sir, I'm a honest woman."

"But are you married is the question," retorts his honour, "eh? what?"

"I am Thomas Bull's lawfully-begotten wife—if you *must* know."

Having thus delivered herself, she looks round the Court with an air of immense approval. The body of the Court (but not "the ear" of it) also approves with loud laughter. The witness afterwards said that was how she "up and told him."

"And do you *live* with you husband?" asks the judge; "eh? what?"

"If it's all the same to you, sir, I do. I 'ope it's no offence for a lawful woman to live with her married husband." (The witness here seemed somewhat overcome.)

His honour, who was visibly affected, then said: "Awful woman, indeed!" Raising his eyes slowly to the ceiling, he seemed lost in contemplation of the felicities that invariably accompany the married state. Case adjourned for a month. Wiggins adjourned *sine die*.

Everybody said, as we came out of Court, what a clever woman that Mrs. Bull was! and that Mr. Wiggins was, no doubt, a very good lawyer, but rather a weak cross-examiner. I could not help thinking I had seen many a worse, because, if he did not put many questions that were of much use, he

did not, so far as I could judge, put any that in any way damaged his case: a great point to be remembered in connection with the Wiggins' mural tablet and his other amiable virtues.

Now, the intelligent student will ask, what was the secret of that power which was thus so mercilessly exercised over this great advocate? Reader, the explanation is simple. Mrs. Bull was a clear-starcher at Mrs. Bumby's, where Wiggins' collars were got-up.

And that was what Wiggins was looking at, when Mrs. Bull made her first observation.

Before THURLOW NORMAN BARON, Esq., Q.C.

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HOW "JOLLY JEMMY" WAS COMMITTED FOR CONTEMPT OF COURT. THE SEVERITY OF HIS PUNISHMENT AFFECTINGLY DESCRIBED, WITH OTHER MATTERS.

"Diggory: Ecod, your worship, I never have courage till I see the eatables and drinkables brought upon the table, and then I'm as bauld as a lion."—*She Stoops to Conquer*.

WE visited a County Court in a country district, where presided a little, old-fashioned gentleman of great dignity. Having been related, many years ago, on the mother's side, to the great grandfather of the then Lord Chancellor, his position was assured as soon as his sex was known; and, labelled with a legal name, he was transmitted to posterity as one of its future judicial deities; indeed, you might say, from his connection with remote dignitaries of the law, that he was a born lawyer—which was true; although it was often remarked that he never increased the stock of law he brought into the world with him.

There seemed to be a case of some importance before the Court, for there was much clamouring, much quoting of authorities, and a great wrangling with the witnesses. My friend and I obtained, by dint of great difficulty—for the crowd was very dense—an obscure peeping-place at the back of the reporters. The Press, I may say, was extremely well-represented in this district. There were about six shorthand writers to take a note of this trial—three representing the Liberal, and three the Tory interest.



The first question I heard, was :

"Will you'll *swear* it was a rump steak, madam?"

"I will, sir, for I says to my husband, Tom, I says, I never see a more beautiful—

"Stop a minute," exclaims the advocate, "I submit, your honour, that what she says to her husband as to what part of the bullock this was is not evidence."

"No," said his honour, looking at the ceiling, "but I think it is part of the *res gestae*."

"How much steak do you swear there was, madam?—now be careful, you are on your oath, I warn you!"

"A pound and ten hounces," replied the witness, with great meekness.

"And suet?"

"A quarter of a pound, sir."

Now we could gather what the nature of the dispute was; and, without going into further details, which may be read in the verbatim newspaper reports of the day, I will simply state that the action was for the price of a pound and ten ounces of rump-steak, and a quarter of a pound of mutton suet. The defence, which was entrusted to the able and experienced hands of Mr. Wixen, was, that it was not rump-steak at all, but, as he termed it, "*mere beef-steak, your honour*." The learned gentleman would not go into the relative merits of beef and mutton suet, but there were cases which showed that if you order mutton suet and are served with beef—His honour nods. As to the price, the learned judge, shrewd man that he was, desired to call some independent witness. It was a clever thought, and worthy of the great mind that conceived it, because, the price charged would probably indicate the quality

of the steak. So a gentleman, who happened to be in the neighbourhood, and was a well-known salesman in Newgate Market, was called and gave evidence as to the ruling wholesale prices of the day. Then the astute judge, to the surprise of everyone in Court, recalled the plaintiff butcher:—

“What did you charge for this steak?” asks his honour.

“One an six, yer ’onner,” answered the plaintiff, with a husky, respectful voice.

“You must make a nice thing out of a bullock!” rejoins the learned judge.

“Yes,” says the husky butcher, “but a bullick aint all rump-steak, yer ’onner!”

At this there was actually a burst of laughter; and, being at his honour’s expense, there was instant suppression.

“I’ll commit anyone,” says his honour, “that I see laugh!” and his honour looks round the Court to see if there was anybody he could catch. He looked for about a minute, and then nicely caught “Jolly Jemmy,” as he was called, the bargeman, with his mouth wide open. He was not exactly laughing, for the laugh, if I may use the expression, was nipped in the bud, when silence was called; but Jolly Jemmy had, somehow or other, forgotten to shut his mouth, and that’s how he was caught. The judge looked at him for a second or two with imposing dignity, and, while so looking, Jemmy’s mouth gradually and involuntarily closed, while his eyes as involuntarily and gradually opened.

“I commit you,” said the judge, “till you know how to behave yourself!”

I am not sure whether his honour had power to commit for so indefinite a period; but power or no power, Jemmy was marched off by the gentleman who plays the part of sergeant-at-arms to his honour, into an inner room, and there left.

What Jemmy's reflections were I don't know; but on surveying his prison walls he perceived a coat hanging on a peg; and, supposing it to have been left behind by some former unhappy prisoner, thought there was no harm in feeling in its pockets. On doing so, he found three half-crowns, two florins, some shillings, and a few other coins.

“Poor fellow!” murmured Jolly Jemmy, who was a kind-hearted as well as a feeling man, “he may want this 'ere, so I'll take it; and if ever I meets with un, he shall have it.” So he good-naturedly emptied the pockets of their contents, and placed the money in his own.

No sooner had he performed this charitable act, than the door was suddenly forced open; and in came, with great haste, a waiter from the neighbouring hotel carrying a large tray; on which were some dishes and covers, and a decanter full of what Jemmy thought was *very* small beer—such as, he supposed, was the prison allowance.

The waiter was in far too great a hurry to say anything, but banged the tray down on the table, and fled as if the County Court bailiff was after him.

“Now,” thought Jolly Jemmy, “Oi wonders how they feeds us poor pris'ners;” and then he lifted the big cover, and lo! to his astonished gaze was revealed a rump-steak in all the glory of gravy and mushrooms! Under another cover were hot potatoes;

and, cunningly disposed under another, were some nice winter greens.

“Wonder if that air chap’s brought any moosturd—Oh, yes! ’ere ur be—that’s rippin’! Now then a drap o’ this ere beer; it looks rayther small!”

With this Jemmy puts the decanter of sherry to his mouth and drinks heartily—excitement had made him thirsty. He thought it was “rum sort of beer,” but not bad for “prison lowance nuther.” He then fell to and very quickly disposed of the steak and vegetables; after which, there being no one to interrupt, he thought he would relieve the monotony of his cell by a pipe. But, somehow or other, at this moment, the thought occurred to him that the money in his pocket might not belong to the “foresaid” prisoner after all, and that some bother might come of it if he kept the coins about him.

“Honesty’s the best policy” said he, opening the window and shouting to the miscellaneous crowd below.

“Look out!” says Jemmy, and down went a half-crown and two shilling pieces.

No mortal pen could describe the excitement of the scene below. To see half-crowns and shillings shower down from the windows of a County Court, was a sight never yet witnessed in this world. To the ignorant mob it was as if heaven’s windows had opened. There was such shouting, such crowding, such fighting for places as you can only see when a crowd is hastening to leave a building that is on fire.

“Look out!” says honest Jemmy once more; and down went two florins and three sixpences. And then you saw a swaying, heaving, fighting, shouting

mass of human beings. But now from all quarters came fresh crowds; the news spread like wildfire that they were flinging bushels of sovereigns from the windows of the County Court; and that everybody who had a vote was to make haste and get his share, for the electioneering agents were paying in advance: so that by the time Jemmy said “look out” a third time, nearly all the town was gathered together. Having disposed of all the money, there was nothing apparently worth throwing out; but it should always be remembered that, when once you begin throwing money out of a window, it is difficult to pacify the hungry crowd. They are sure to clamour for more. Jemmy had roused the cupidity of the multitude, but could not so easily quell it. But he found a first-class return ticket in a little pocket of the coat, and down he shied it at an old woman. Next he thought, as he did not want a great coat in his cell, which was nice and warm and had a good fire, the people might as well have that, and down it went. This was very fairly divided amongst the mob. Then, looking round his cell, Jemmy espied a hat; and, with another shout of “Look out, lads,” flung it into the midst of the gaping multitude, who received it with as much enthusiasm as they would if there had been a popular head in it.

But here, Jemmy’s generosity, which bore a great similitude to that of many other public benefactors, was exhausted; and, having relieved his conscience, he closed the window and gave himself up to the solitariness of his position; wondering what was to become of his unhappy wife and children; and how the “Mary Jane,” (that was his barge,) would ever finish her voyage.

It was lucky for him, however, that he had thus completed his acts of generosity; for at this moment in came the little judge followed by the usher, and exclaiming with great dignity and hungry impatience, "Is my lunch ready?"

Jemmy's heart sank within him. The whole situation was revealed at once; so it was to the learned judge, who was too dignified to utter a word for some moments. Jemmy, however, being a man of conciliatory disposition, quietly said:

"Beg yer honour's pardon—'ope I aint intrudin!"

"What is this?" said the judge indignantly to the usher.

The usher stammered.

"Fellow!" said the judge, "You have consumed my lunch."

"Lookee ere yer 'oner, it was as this. I was 'ere a pris'ner, and just as I was thinking wot might become o' my wife and childern, I ears summut; and, thinks I, ullo 'ere's the chap coome to coot my 'air; and, jist as I wur feelin' it all round as may be so, in coomes this 'ere chap wi' t' wittals, and I thowt, thowt I, them air aint bad wittals nuther for a poor pris'ner; an oi wish his 'onner, thowt I, ud commit my ole domman an the seven children—it ud do em good, loike."

"Hold, fellow!" exclaimed the judge, with great dignity, "you've been guilty——"

"O' avin' my mouth open's fur's I can see, an these 'ere wittals——"

"Hold! I say, you're drunk!"

"I'll ould and all!" answered Jemmy; "but if ar'd

a knowd it were thoine, danged if'ar wouldn't a' left thee a snap an a soop loike, an all!"

"Begone, fellow!" exclaimed the learned judge, with great dignity. And thus Jolly Jemmy purged his contempt and departed.

The learned judge, having ordered a second repast, returned into Court; and, after due proclamation of silence, thus delivered himself:

"This case has been so ably argued on both sides, that little remains for me to say. It is an important matter, and not without grave difficulties. I have little doubt, in my own mind, as to the law upon the subject; but I think, as the authorities are so numerous on the one side and the other, I ought not to arrive hastily at a conclusion. I will, therefore, carefully look into the authorities, and deliver judgment this day month."

Then I heard one of the reporters, who was, as I afterwards learned, a turf prophet, and connected with the sporting press, whisper:

"By George! it'll be a clinker; I'll lay odds it licks the House of Lords by a length!"

As my dusky friend and I got into the street, we perceived that the town was in a state of tremendous excitement. Soon after, we learned that the tumultuous proceedings had reached the ears of the learned judge himself; and, as rumour usually assigns an erroneous cause for every extraordinary event, in this case she represented that the public mind was unhinged, in consequence of his honour committing Jolly Jemmy to prison. Nothing could be farther from the truth, as the reader knows. But true or false, I can affirm on the authority of my friend,

that some time after, the learned gentleman was got out of the County Court by a back way, and was seen to clamber over a wall, with great dignity, into a neighbouring garden. It was noticeable that his honour had no greatcoat; and that a hat, many sizes too large for him, quite concealed the judicial features, and rested on the bridge of his honour's nose.

From this garden, which belonged to the hotel, his honour made his escape from the supposed fury of the multitude.



Before REGINALD BUCCLEUGH St. JONES, Esq., Q.C.

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“The devil! did he say all that in so few words? What a fine language it is!”—*St. Patrick's Day.*

JUDGING from the audience, there was evidently some great business on hand; for, on entering the next Court we perceived three able-bodied paupers from the neighbouring workhouse, who were out for a holiday; and hearing that the “Zizes” were being held, thought they would like “to zee zummut.” There were three mothers with their babies. They had come to hear Mrs. Spiller’s case, which had created so much excitement in the neighbourhood for the last three weeks. Mrs. Spiller was a popular laundress; and the action was brought for the recovery of some baby appendage which had been lost “in the wash.” There were also present three road-scrapers, who, strange, to say, all had wooden legs—I mean one wooden leg apiece. These, being out of work, had hobbled into Court. There were also seven or eight of those miscellaneous gentlemen, who are usually to be found in the neighbourhood of livery stables.

It was a startling scene when his honour entered the Court and took his seat on the Bench. The very babies seemed to recognise his presence. The reporters got ready for their work; the usher posted himself in an upright position, immediately in front of the judge; and the solicitors all bowed lowly before the judicial presence. After some time of dignified silence, during which you could hear the chirping of

the birds outside the Court, his honour announced that he was prepared to deliver judgment in the case of *Rook v. Crane*, and inquired if the parties were present. It having been stated that none of them had been seen in Court during the last three months; his honour thus proceeded, keeping his eyes steadily fixed on the ceiling.

“In this case the plaintiff’s name is Eliza Rook, and she seeks to recover from the defendant, whose name is Julia Amelia Crane—(ahem)—the sum of one shilling and eleven pence, being the balance of an account stated between the plaintiff and the defendant—(ahem). The evidence on the part of the plaintiff consists of her own recollection, confirmed, so far as the same is capable of confirmation—(ahem)—by a book in the handwriting of the plaintiff, but kept in the possession of the defendant—(ahem). Now, it is a rule of evidence, that entries made by a still living witness, are not admissible as evidence in support of the account;—(ahem)—but, it is also a rule of evidence, that—a—a—a plaintiff is permitted to refresh his or her memory, as the case may be, by referring to entries made by himself *con—tem—po—ra—ne—ous—ly*—(ahem)—with the circumstances to which those entries relate.” (Here the miscellaneous loungers all stared with intense admiration and open-mouthed wonder at his honour; as though they all agreed that this “was scollardship and larnin’ if yer like;” and all seemed to “allow” that his honour was the greatest man at present known.)

“Now I find,” continued the learned judge, “that this account distributes itself over a period of eleven yeahs; eleven yeahs! (hem), the first entry having

been made on the 1st of April, 1850, and the last entry on the 1st of April, 1861. I find also that there was an intermission or *lacuna* in the account book, (hem!) from November 2nd, 1854, to October, 1859." (Here the three able-bodied paupers drew the backs of their hands across their mouths, as much as to say "Aint he a wonder? What do you think o' that?")

"Under these peculiar circumstances, the first question for the decision of the Court is, whether, under the authority of *Brigg v. Snigg*, 68 Beavan 972, it is the duty of the Court to treat this as a settled account, as on the day of the intermission; or as a still open and current account on the day of the resumption of account (hem!) between the parties. (a pause). Now, for the reasons given in *Gun v. Grouse*, 20 Meeson & Wellsby, page 960; 20 Meeson & Wellsby, 960, to which I need not more particularly refer, I think, under the circumstances of this case, there must have been the *animus revertendi*, if I may be permitted the expression, on the part of the defendant (a-hem!) which justifies the plaintiff in treating the account as one subject to subsequent variation; and which would prevent the Statute (a-hem) of Limitations applying to any item. I therefore find *prima facie* that the plaintiff is entitled; but then the defendant sets up a defence, which is partly one of law and partly one of fact; and, as the duty is cast upon me of "deciding" the question of fact without the assistance of a jury, I will give my reasons for the decision I am about to pronounce—(hem!) It is a defence in fact to so much, namely, 5½d., part of the amount claimed, if I hold it to be sufficient in law—

namely, that 5½d., or one loaf of bread, was supplied to defendant's daughter on the joint and several liability of the defendant *and* her daughter; and the defendant relies on the payment *by* the daughter in account, which the defendant suggests that she, the defendant, ought to have the benefit of, on the well-known principle of appropriation of all payments by law to liabilities in order of priority of time. (Here the three mothers looked at one another with the deepest reverence, as much as to say "There's for you!" and wondered whether America, with all her boastfulness, could produce anything to the like effect).

"I have not had an opportunity of referring to Clayton's case since the argument of this matter; but I am under the impression that Clayton's case cannot be said to apply to a case of different accounts, when money is paid by one of two joint and several debtors, without any specific appropriation of the amount, at the time by such joint debtor. The rule of this Court, both as regards fact and law, is, that the defendant who desires to avail himself of the ground of defence of set-off, must establish the same both in fact and law to the satisfaction of the Court. As the defendant has not succeeded in convincing me that she is, in law, entitled to the benefit of any payment by her daughter in reduction of the account, by this 5½d.; she has not, in fact, brought herself within the rule in Clayton's case; and, as it was for her to satisfy me that she *was* within the rule of Clayton's case; the judgment of this Court must be for the plaintiff, for the full amount, namely, *one shilling and eleven pence*, with the usual result as to costs.

Here the four road-scrapers wagged their heads knowingly, and jobbed their wooden legs simultaneously in a volley on the floor, as much as to say—“Well, I’m dang’d, Jack! Wot d’ye think o’ he? Talk about the Wicker!”

The reader will find an interesting report of Mrs. Spiller’s exciting case, with his honour’s learned and elaborate judgment in “*The Goose Green Express and Peddlington Animadverter.*”

## COUNTY COURT PRACTICE.

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It requires a strong and well-balanced mind to be impartial; there must be absolute self-negation; the mind must control the prejudices, and the will must control and check the vagaries of the mind.

Advocates in County Courts, have frequently to practise before judges who take the side of the plaintiff or the defendant, from the very commencement of the proceedings; thinking, that in so doing, they are assisting in the cause of justice. No greater mistake can be made. It is an encroachment on the privileges of counsel, and the functions of the jury. The weight of a judge, leaning out of the perpendicular, almost invariably has an effect upon the five jurymen. Twelve would be more likely to resist the pressure.

But even if the judge be "with you," my young friend, do not relax your efforts before verdict. So surely as you give way, some unexpected incident will happen, which you may find it extremely difficult to get over. No doubt it is nice, floating down stream without an effort; but, it is not pleasant to find a hole suddenly made in the bottom of your boat, by the stump of a tree or the point of a rock. Nor need you be in the least discouraged, if the learned

judge does not, at the first blush, like the look of your case. He may not understand it all at once. Intuitively he cannot know it, because no knowledge is born with a judge. A blacksmith, when he takes the white-heated iron out of the furnace, preparatory to beating it into a shoe; at the first blow or two, sends the sparks all over the place. It looks pretty, but is a shapeless mass; and the artificer alone knows how he will beat it into form. Steadily he hammers away, and by-and-by the spectators have a dim perception of what he is about. Then, more and more, it resolves itself into form by steady perseverance, and becomes at last a perfect horse-shoe.

You must bring your case into shape before the judge can understand it; and, although its precise form may not at first be apparent, you will compel at last, those who may have mistrusted your work, to give you credit for knowing what you are about.

How often has one heard an ardent young advocate exclaim, when the judicial summing-up was going on—"Why, I thought the judge was with me! He's dead against me!" There is always a danger in too much judge.

But for your belief in the judge's favourable view, you would have called another witness maybe, to elucidate some point, which you thought his honour thoroughly understood and was admiring; *now* you find it was never in the judicial eye at all. Or, perhaps you would have put in a letter to prove something which seemed to be taken for granted or admitted. Don't let anything be taken for granted, if you can prove it; unless your opponent admits it, *and the admission is recorded in the judge's notes.* The

great difficulty is not so much the facts of a case ; these only give ordinary labour of argument and evidence ; but the prejudices, and too often the ignorance of the jury, are your main obstacles. With these the advocate has often to grapple and contend, as though they were so many demons arrayed against him. If he had a mind of matchless strength ; a temper cool as ice ; and a spirit as ardent as fire ; he would often find the task insurmountable. But with our every-day temperaments, the task is excessively trying, and the strain on an advocate's temper almost unendurable. Yet, no matter what the condition of things, the advocate must be firm as a granite column in defence of his client ; and, always polite as a poplar, in his respect to the tribunal. He should never come into collision with the Bench ; if he do, his client will suffer. The judge may be against you ; and, if so, you must submit, unless the law is on your side ; if it be, "you agree to differ," and must settle your differences elsewhere. I have seen advocates who seemed to require a kicking-strap. A judge has hardly been able to speak before they have been up in the air. I do not know why this should be, for nearly every case is a dead level of facts, ground almost to powder by constant travelling over. It is difficult, no doubt, at any time to make an interesting speech, and depressing influences too often surround you ; still, I see no reason why the youngest counsel should lose his presence of mind, even though the judge sometimes pops out upon him from round the corner.

A powerful opening speech, or a plausible witness, will sometimes over impress a judge, if he has not



had great experience. If you are asked what is your defence; remember, it is better not to disclose it before it is ripe. Patience is the handmaid of Wisdom. Judges of the Superior Courts never form an opinion about the merits of a case; or, at least never show that they form one, until they have heard both sides. Be under no apprehension, therefore, that because a County Court judge asks you what answer you have got to the case, you are bound to disclose your evidence prematurely. I have seen the Court turned completely round by the facts of the case, after a most glowing opening. Brilliant coruscations from the anvil, have momentarily induced the impression that the whole matter was fireworks; but, a little patience, and the thing becomes a well-turned horseshoe.

An advocate should not forget that, of all men in this world, judges are the most tried. They have to put up with crotchets and tempers and weaknesses, which render their position at times anything but enviable; and, the marvel is, that they are generally so placid and amiable as we find them. If you expect them to make allowances for the perplexities of your position, you ought also to be equally considerate of the difficulties of theirs.

Therefore, oh! young advocate, study the judges. As “the proper study of mankind is man,” so your proper study is that of the tribunal before which you practice. *Win the ear of the Court*; not by servility, but by studying the strength and the weaknesses of men. You need no microscope, for human nature is not different on the Bench from what it is elsewhere; and a man does not change his nature with his gar-

ments. His influence is magnified, his strength of character is the same. By careful study you may photograph human nature, even to the minutest wrinkle.

A HUMBLE ADDRESS  
TO  
OUR FUTURE JUDGES.

“Take notice, brother,” quoth Sancho, “Don does not belong to me, nor ever did to any of my family. I am called plain Sancho Panza ; my father was a Sancho and my grandfather a Sancho, and they were all Panzas, without any addition of Dons or Donnas, and I fancy there are more Dons than stones in this island. But enough ; God knows my meaning, and perhaps, if my Government lasts four days, I may weed out these Dons that overrun the country, and, by their numbers, are as troublesome as gnats.”—*Don Quixote*.

## THE AUTHOR'S HUMBLE ADDRESS TO OUR FUTURE JUDGES.

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Just as I was commencing this important chapter, a friend, who takes much interest in my welfare, but who belongs to the school of Old Fogeyism, entered my chambers, and, with uplifted hands, exclaimed—

“My dear fellow, what are you about?”

“I am just finishing my book,” said I, with great meekness.

“Yes, and you are writing something about the judges?”

“And why not?” I asked, with as much coolness as if I had been at the mouth of a loaded eighty-  
oner.

My friend was a most irascible old gentleman; but I was old-gentleman proof.

“You have your future to think about.” “That is Old Bogeyism,” said I. “I wish men would preach goodness for goodness’ sake, and not with a view of propitiating some imaginary monster. When I get to the horizon I will crawl under, and take a peep at this future; till then I am quite content with enjoying the present.

The old gentleman looked as if he was about to alter his will. To my surprise, however, he merely whispered—

“Can’t you confine your observations to students? *They* can’t commit you for contempt of court.”

At that formidable word my courage failed. Never in my life could I stand the haughty curl of a parish beadle’s lip even; to brave contempt of court was no part of my bargain when I entered upon this world. My friend had found my vulnerable point.

“I will collect the very smallest boys I can find,” said I; “Nothing could be more interesting to the student than to give him some general advice as to the manner in which he is to comport himself when he becomes a judge.”

Then the old gentleman left.

To carry out this excellent idea, I collected the smallest boys I could find at Eton; but I thought it advisable to have some of the biggest of the Board School pupils, so as to obtain about as fair an average as possible. I then took them into a large room, or rather hall, and stood them in long rows.

I then collected myself as well as I could, which required considerable effort; for it is no small event in one’s life to face some *three hundred and fifty judges*! I stood up, however, with great boldness, which not a little surprised me. The scene was enough to strike any man with awe; but, having been at one time in my life a corporal in the volunteers, I had acquired great courage and coolness, and in this trying moment those qualities stood me in good stead. So, taking my cane, I gave three smart raps on the table that stood near me, and called out in an

authoritative tone, as loudly as I could, so as to inspire me with the more courage :—

“ Attention ! ”

Immediately all the judges started, and I heard a suppressed shuffling of feet, as though they were preparing to stand firmly and receive my charge. I must not omit to state that I was particularly struck with the clean and tidy appearance of the School Board boys. Their hair was nicely parted at the side, and was shining and fragrant; indeed, I believe there had been an extra allowance of bergamot for the occasion, as Mrs. Smallpiece afterwards remarked, “ what mother as is a mother would begrudge anythink to make her boy decent when he was going to be made a judge ? ”

“ First of all,” said I, “ let the judges be well mixed, an Eton boy and a School Board boy alternately, for we must have no distinction of classes.”

“ Now,” said I, “ we must have a Lord Chancellor and a Home Secretary, otherwise I shall lack the necessary authority for your appointments.”

What a curious study of human nature presented itself to my contemplative eye at that moment ! There was scarcely a boy who did not look at me with beseeching eyes, desiring to be one or the other of the high officials I had named. The Eton boys were particularly to the fore in this matter. One, St. Clair, actually thrust himself forward, at least three inches, in front of the other boys.

For the moment I said nothing, but casting my eye along the line of beaming, hopeful faces, I was particularly impressed with the look of extreme reverence and gravity, of a big orb of a face,

white and full as a large turnip, which shone upon me over St. Clair's shoulder, and looked all the whiter by contrast with the Eton boy's jacket. That face was never for one moment turned from mine; its keen, grey eyes absolutely fixed and rooted their glance in me as though I were "the main chance." I suppose this boy had learned somewhere to keep his eye steadily fixed on the "authorities." But whether it was acquired knowledge or whether it was divine instinct, there he was melting me with his eager gaze.

I was looking down the ranks, and presently a choking kind of voice said: "I'll be Lord Chancellor, sir."

Sure enough it was the voice of the chubby boy. He was a Board School boy, and his name was Billy Dabbs.

Just as he uttered this exclamation, St. Clair, the Eton boy, dug his elbow with such force into Dabbs' side that for a moment I was in doubt whether it had not gone through him, but Dabbs never moved; only screwed up his mouth tightly, and partially closed his eyes as if in extreme pain. Not one word did he say.

Now, I thought that boy has at least one of the necessary qualities for a judge: *great imperturbability of temper*; not easily provoked; if he can stand an elbow in his stomach he can stand anything.

I thought it a good opportunity to administer a wholesome rebuke before proceeding further, so I said:

"Silence! There must be no quarrelling among the judges. You musn't dig one another in the ribs like that; you must be gentle; you must agree; you must concur; you must be of the same opinion.



Differences of opinion among judges is very expensive to the clients."

"But is he to be Lord Chancellor?" angrily asked St. Clair.

"I think so," said I; "he seems a nice, mild boy, while you are an angry boy."

"I believe he's got water on the brain," said St. Clair.

I was determined not to regard this observation as if it was intended to be offensive. Anxious, however, to manifest impartiality, I said, "Let Dabbs and St. Clair frame questions such as they would put to an applicant for office."

St. Clair at once commenced writing down his questions, while Dabbs preserved his placid equanimity, elevating his chin perhaps a degree or two more than usual.

After some time St. Clair presented his written questions as follows:—

"Who was your father?"

"Were you in the Eton boat?"

"Did you distinguish yourself at your university by cricket, boating or screwing up the dons?"

"Were you in the 'Varsity eleven?"

"Are you any relation of anybody; if so state his lordship's name?"

"What aristocratic connections have you?"

"Is any member of your family related to any nobleman?"

"Have you any political influence, if so state of what nature?"

"Are you a pious man?"

I read the questions out, but the immoveable Dabbs said nothing.

"Dabbs," said I, "have you no questions to write?"

"No, sir," answered Dabbs, without so much as moving his lips.

"But what should you ask?" said I.

"Two questions, sir," replied Dabbs.

"And what are they?"

Then said Dabbs, without moving his head, "I should ask"—

"Do you know any law?"

"Have you ever had any practice?"

"Good!" said I. "Your questions, St. Clair, are considerably out of date. The intelligence of this age has gone beyond physical accomplishments, and seeks for mental qualifications. They would no doubt have answered every purpose in former times, when family influence was the passport to posts of honour; but the very fact of a Board School boy being a candidate for the high distinction of Lord Chancellor, proves that we are living in an age when merit must come to the front. I therefore have the satisfaction of announcing that Her Majesty has been graciously pleased to appoint Billy Dabbs Lord High Chancellor of Great Britain."

Of course there was loud applause, but I could perceive from the extremely tight compression of Dabbs's lips that he was suffering pain, and have no doubt St. Clair was giving him a sharp tweak behind.

And now I perceived no little confusion at the far end of the room; it was not exactly a discussion, and not altogether a fight; but it certainly was a disturbance.

Proceeding to the spot, I inquired what the cause of the demonstration or tumult was.

"If you please, sir," said an urchin, "this chap says he'll be Home Secretary."

"Well," I answered, "and why not?"

"He's only a Board School, sir; isn't Eton to be anywhere?"

"Yes," said I, "Eton will be wherever Eton can get. But great offices are no longer to be the monopoly of a clique. In this new state of society merit must come to the front, and take precedence of all other claims whatsoever."

"But he hasn't got any merit, sir."

"He has the merit, at all events, of speaking first. He has shown some fitness for the high distinction of Home Secretary; he can quell a riot, at all events. He has a firm smile, an impartial stare, and a stately sneer. Yes, I think he will do. Then I called out as loudly as I could, "Attention!"

"My Lord, Recorders, Worships, and Honours,—There is an old proverb to this effect, 'it requires a steady han' to bear a fou' cup.' You will require that steady hand, for the cup of a judge's dignity is very full. You must not, therefore, (attend to this, boys), when your own cup is overflowing, rattle all the empty cups together that you see before you, for the purpose of exposing their emptiness, as though you would say 'Aha! aha! alas, my brother!' and when you are addressed as my lord, your honour, or your worship;"—here Dabbs's eyes twinkled so, that St. Clair gave him what he called a "one-er" in the back—"assume no haughty and austere airs, but let your conduct, though firm, be also gentle. Let quiet courtesy and gentle mercy grace your dignity, so that the youngest advocate may forget his

nervousness in your friendly demeanour, and feel that he is not a criminal at the judgment-seat, but an advocate invested with privileges for the benefit of the public.

“And, if you please, also recollect that a young advocate’s power of conducting his cause, depends very much upon the demeanour of the Bench. What do I see there? I exclaimed, that fourth boy—what is he about?”

The fourth boy, a little old-fashioned wizened-faced lad in a suit of dark green corduroy, the jacket and trousers of which were fastened together with brass buttons round the waist, drooped his head.

“You were sneering,” said I; “let me respectfully warn your honour that a judge who sneers is never respected. It makes the people suspect that he believes himself superior to his position, and that nobody knows anything but himself. I shall dismiss that judge if he sneers again.

“He’s only a County Court judge,” says the boy next to him, a bright, smart, good-tempered little fellow in a pretty little Eton jacket and collar, looking the very finish of neatness and good-breeding.

“*Only* a County Court judge?” said I, “Well now, pay marked attention to what I am going to say. Take two paces to the front and stand at attention—march. County Court judges have chiefly to do with the poor, and the Queen will not have her poor bullied by a man because he happens to be only a County Court judge. The poor go to the County Courts to get justice, and not sneers or unkind language. If any class of persons ought to be treated

with gentleness and courtesy it is the poor. Let that County Court judge step forward two more paces! I shall give him a private lecture by a higher authority than myself. So the small boy in the dark corduroy suit stepped forward again two paces and stood abashed.

Then I heard St. Clair say "*Dabbs is sneering, sir,*" immediately after which Dabbs said "I scorn the action."

I thought this a fitting opportunity to break in with this remark: "What! scorn an action? No, there must be no scorning of actions; they must be *tried*. Small actions are equally important to small people as large ones to large people. Now then, County Court judge, one word before you resume your place in the ranks. Do you know you can wound very deeply with a sneer, and wither a poor litigant with a smile? I was going to call upon the Lord Chancellor Dabbs to reprimand you, but that, now, is out of the question, since he has been accused, (I do not say he is guilty,—I think he is not,) of the same offence. Judge, resume your place.

Here Dabbs thrust his chin further forward in a very consequential manner; so much so, that St. Clair again gave him a kick in the back with his heel, which made Dabbs angry.

"There must be no anger and no irritability on the Bench," said I. Counsel cannot do their work satisfactorily to themselves or their clients, if there be. I have heard some counsel say they lose 75 per cent. before some judges. I confess I should not have thought they had so much percentage in them; but, however that may be, there is some truth in the

observation—therefore be calm. A calm dignity is better than a disquieting irritability. Justice is sacred, and must not be tarnished by human infirmities.

The imperturbability of Dabbs was such that I perceived St. Clair writhing with anguish, which was clear evidence that to some unquiet natures, even the utmost placidity of a venerable judge may be provoking. Dabbs' face never winced; he was calm, dignified and firm. It is true he had very little to do except to keep his temper and the Queen's conscience, but he kept them both in the darkest recess of his own immaculate bosom, so that neither was ever visible.

“Now,” said I: “Recorders—take open order!”

At once the whole of the Eton boys stepped two paces to the rear: and I was surprised to find that all the Recorders were Etonians.

Billy Dabbs turned up his eyes with a kind of contemptuous glance, at which one of the boys exclaimed:

“Oh! ain't he pious, sir?”

At this tone of disrespect to his lordship, I was much chagrined; but, determined to turn everything to advantage, I immediately delivered the following lesson on piety:

“Let it be understood, that I have the most profound respect and veneration for the pious man; but, in the words of Solomon, let me say, ‘be not righteous overmuch!’ Piety is an excellent bulwark against sin, but, if thrust too prominently forward, it is apt to provoke the sneer of the cynical. A perfectly pious man would make a bad judge, unless he possessed perfect knowledge of human character.

He would look upon crime through a medium of holiness, which would magnify it in his eyes. He could not make allowance for human frailties and infirmities. He would see no evil motive in a witness, and no falsehood in his evidence.

To form an accurate and impartial opinion of the motives which actuate men, you must be conscious of your own infirmities and shortcomings; and remember that Justice, administered in a hard, unfeeling tone, and with frequent outbursts of anger, will seem rather like the utterances of a tyrant than the language of a judge. You must not, in fact, comport yourselves as if you were thundering down law from Mount Sinai, but as if you were calmly administering justice in a rural district.

Recorders, you must not belabour the poor grand jury with foolish twaddle about Church Progress and Australian Beef, Free trade and Epidemics, Foreign affairs and Root crops. Leave potatoes and politics alone on the judgment seat.

Let me tell you a little anecdote—

Two men were about to break into a house, when one was heard to say to the other—

“Wait a minute, Jem, it aint gone nine.”

“What’s that matter?” inquired the less experienced burglar.

“Why,” said his companion in crime, “If we’re copped afore nine we shall be took afore that there bloke as is allays for running a cove in, and don’t give yer no chance, and as never had a defence in his life. Arter nine we shall go afore a regler judge as ull stand up as much for the prisoner as he do for the tother. Fair play, Jem.”

When a prisoner is on his trial, remember that your functions are not those of the Public Prosecutor. Some recorders think it a reflection on their capacity if a prisoner escapes; as though the duty of a judge were, not to inquire whether a man be guilty or not guilty, but to pass sentence upon him. You must not take the lead and make all the running against a prisoner, as though you were hunting him down, and were the whipper-in of the pack.

"How are we to sum up?" asks St. Clair.

"I am very glad you have asked me that question," said I; and first I think I had better tell you what you are not to do."

"Oh!" says St. Clair, "we know all that, sir."

"What is it?" I asked.

"Why, we haven't got to put too much side on."

"Over-pompousness," said I, "is a feeble attempt to magnify the person and not the office. The first and most important duty you have to perform is to state the charge to the jury. Let them understand what they are trying, otherwise it will be useless to attempt to show how the evidence bears upon it. Here you will find your experience, if you have had any, of infinite advantage in reminding you how it is to be done, and your knowledge of the criminal law, which I sincerely hope you will possess, will guide you as to *what* is to be done. Next will come your summing up, which is not to be a mere reading of the evidence with twaddling comments against the unfortunate prisoner. That is not summing up at all, but a wordy amplification of the speech for the prosecution. You are not to read the evidence of a



witness, and, as soon as you come to a point against the prisoner, ask, '*How does that affect your minds, gentlemen?*' as though you were in a cricket match, and were constantly shouting '*How's that, Umpire?*' Nor, are you to read over, all the unimportant details that have crept into your notes."

"But," asked St. Clair, "are not some of the very little details important?"

"Certainly," I answered, "I am speaking of irrelevant details. Nothing is small or trifling that is relevant to the inquiry; and nothing is important that is not relevant. To sift the evidence is your duty, and to present to the jury those matters of evidence which on the one side bear on the guilt; and, on the other side, on the innocence of the prisoner.

I now dismissed the class with my best wishes for their future prosperity in the glorious career that was before them.

I am sorry to say that, as I passed under the window, on my way from the lecture-hall, I heard an uproar; and, turning my head, perceived, to my great sorrow, that St. Clair was vigorously engaged in punching the Lord Chancellor's head.

\* \* \* \*

After so laborious a day, in the quiet of my home I took up one of Voltaire's Romances; and, strangely enough, came upon the following passage:

*"The Young man's brain was presently turned; he acquired the art of speaking without understanding a single word he said, and perfected himself in the art of being good for nothing. When his father saw him so eloquent, he began to regret, very sensibly, that he had not had his son taught Latin; for, in that case, he*

*could have bought him such a valuable place in the law."*

When I read this, I could not help thinking, how truly thankful we ought to be, that we live in a country, where, neither the importunities of Friendship, the exigencies of Politics, nor the endearments of Family Relationship, can purchase anything.

*"My Own, my Native Land!"*

THE END.



















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